

1964

# Thomas Jefferson's reaction to the Constitution of 1787 during the period of its ratification: September 17, 1878 - March 4, 1789

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### ABSTRACT

Thomas Jefferson had to view the framing and ratification of the Constitution of 1787 from France. There he had become acquainted, at first hand, with European opinions of the American government. He had seen how deficiencies in the Articles of Confederation failed to provide for a political order which the Europeans would respect. They looked at the Congress as an impotent body and the United States as a mere collection of autonomous states.

Jefferson became convinced of the need for reform. He thought several amendments which would extend the powers of Congress to include regulation of commerce, an independent income, and responsibility for the total debt of the nation would be sufficient. The movement to grant Congress the power to regulate commerce began with the Annapolis Commercial Convention. This convention did not accomplish its ends. Only five states attended, but their delegates issued a resolution to the states to send delegates to Philadelphia to consider a general revision of the federal government.

The Philadelphia Convention convened as a functioning body on the twenty-fifth of May, 1787. It deliberated in secret until the seventeenth of September. The Constitution was proposed to the states for ratification.

Jefferson had formed his first impressions within two months. He did not like the Constitution. He did not understand the reasoning

behind the making of a new constitution and the overthrowing of the old. Besides, the new one had no bill of rights, no provision to limit the number of terms of the executive office, and no means of curtailing the exercise of governmental power which could be brought to bear directly on the citizen.

He proceeded to flood the mails with letters to friends. He elucidated his reaction to the Constitution in its entirety or its parts. At first, he referred to it as a degeneracy of American liberty. He could not understand how the Americans who were so jealous of their liberty could ascribe to a constitution which did not guarantee them their rights. With reflection and discussion, he came to see the inherent wisdom of the new instrument of government and accepted it. He did so, though, with two reservations. He wanted a Bill of Rights and an amendment to limit the tenure of the executive.

Jefferson was concerned for his country during this trying time. In the quest for a stable government which would adequately fulfill the expectations and desires of the people, he did not want to see the country saddled with one which was no better than that against which they had rebelled.

He realized that the Constitution would provide, quite reasonably, what he considered to be good government. He was anxious that the seeds of its own destruction within it be removed. The government had to be kept from subverting itself through its natural tendency to encroach upon the liberties of the people. He finally came to accept the Constitution as the "wisest ever yet presented to men." Under it, there would be a government which could fulfill the needs of the moment and which would provide for the republic in the future.

THOMAS JEFFERSON'S REACTION TO THE CONSTITUTION  
OF 1787 DURING THE PERIOD OF ITS RATIFICATION:  
SEPTEMBER 17, 1787 - MARCH 4, 1789

By

Paul Daniel Caravetta

A THESIS

Presented to the Graduate Faculty

of Lehigh University

in Candidacy for the Degree of

Master of Arts

Lehigh University  
Bethlehem, Pennsylvania

1964



This thesis is accepted and approved in partial fulfillment of  
the requirements for the degree of Master of Arts.

May 4, 1964  
(Date)

George Kyte  
Professor in Charge

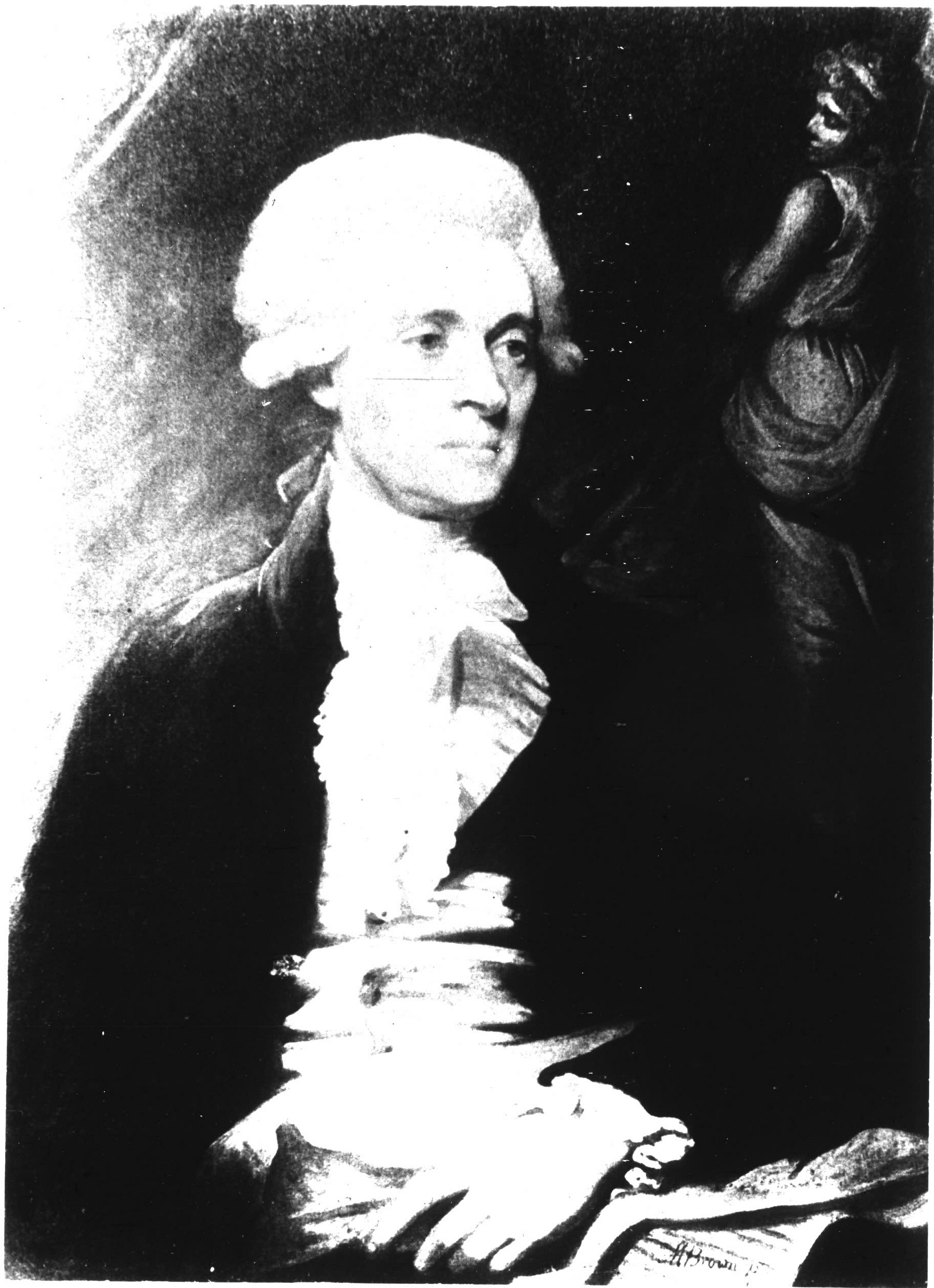
John Cary  
Head of the Department

### ACKNOWLEDGEMENTS

The preparation of this thesis has required the various contributions from persons other than the author. He must acknowledge with gratitude the guidance of Dr. George W. Kyte. Additional thanks are owed to Dr. Kyte for his original suggestions to inquire into Mr. Jefferson's reaction to the Constitution of 1787. The recommendations which Dr. John Cary, the Head of the Department of History, made are also appreciated. Dr. Cary suggested additional reading which led the author to a deeper understanding of the implications of the framing of the Constitution and to avoiding the pitfalls in the complexities of the Confederation period.

The author must also acknowledge the use of the library resources on Thomas Jefferson of the University Library of Lehigh University, the Harvey Memorial Library of Moravian College, and the Library of Lafayette College.

Finally, the encouragement of my wife, Joyce, sustained me and helped make this work possible. Her patience, though at times strained, endured to the end; and she has welcomed the presence of Mr. Jefferson into our home.



Thomas Jefferson went to London in March, 1786, to collaborate with John Adams in the negotiating of a treaty with Portugal. Adams wanted a portrait of his friend and commissioned Mather Brown to do it.

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### ABSTRACT

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## INTRODUCTION

The American experiment in constitutional republican government and the transition from the Articles of Confederation to the Constitution had attracted the attention of the devotees of constitutional government of the eighteenth century. The new nation had operated relatively well under the Articles of Confederation. Nevertheless, the exhilaration of the newly-gained freedom brought on an impatience with the calm, slow-moving democratic process of the Articles of Confederation. American trade and commerce found new channels for expressing its genius. Manufacturing stimulated by the War of Independence sought protection from foreign manufactures. The situation which had evolved demanded action, and merchants and manufacturers became impatient with democratic government. A more energetic government which possessed the necessary machinery that favored the commercial and industrial classes was deemed necessary.

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Merrill Jensen, The New Nation, (New York: Alfred A. Knopf, 1950), 407, 417-19 and 424. Hereafter cited as Jensen, New Nation. Professor Jensen alluded to the impatience of the commercial and industrial groups within the Confederation. By stressing the vitality rather than the weakness and sluggishness which had previously characterized the Confederation, he made a case for a situation for which time had run out. The American experiment was working, and the country was recovering from the effects of the war, the dislocation of its trade, and getting itself diplomatically recognized as an independent nation. But things could have been better. The failure of the Impost of 1781 and the Finance Plan of 1783 only caused more restlessness and brought on the events of 1786 and 1787, the Annapolis Commercial Convention and the Philadelphia Constitutional Convention.

The result of the struggle between the federalists who wanted to maintain state sovereignty as espoused by the Articles of Confederation and the nationalists who saw the possibility of the fortunes of the country faring more richly under a strong central government, gave birth to the Constitution of 1787. To gain their ends, the nationalists<sup>2</sup> thwarted the movement to reform the Confederation. The nationalists were able to gain their ends in the struggle for a stronger central government because they stood for the unity of the United States. The retention of unity became the most rational and influential facet of<sup>3</sup> their argument.

There were those who wanted to insure the unity of the nation, but at the same time they did not want to sacrifice the individual liberty of the states either by the dissolution of the states in an extreme form of centralization or by their subordination in a more mild form. One of these people was Thomas Jefferson, who saw the key to future American greatness in the closer union of the states. Yet he did not feel that the Articles of Confederation had to be replaced because they were inadequate. He knew that they needed reforming to overcome their weaknesses. Specifically, Congress needed an independent income to take care of its obligations adequately and provide for the payment of the national war debt. In addition, there had to be a means of regulating<sup>4</sup> trade so that it would be uniform in all the states. Jefferson's

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Jensen, New Nation, 407, 419-21.

3

Ibid., 415.

4

Thomas Jefferson to Archibald Stuart, January 25, 1786, Julian P. Boyd, ed., The Papers of Thomas Jefferson, (Princeton: The Princeton University Press, 1950- ), IX, pp. 217-18. Hereafter cited as Boyd, Papers.



solution would have amended the Articles to give strength to the structure of government.

Thomas Jefferson had been the American minister to France since March, 1785. From Paris, he had observed the formation of the new government under the Constitution of 1787. Before leaving France to take up his new position as Secretary of State in the first administration, Jefferson had come to accept the Constitution as a means of providing the best of all possible governments for the United States. He had struggled with himself to reconcile the structure of government as proposed by the Constitution with what he had considered to have been the government which would give man the maximum happiness and liberty with the least coercion. By means of discussion and deliberation, he came to see the wisdom of the new instrument of government.

There were features in the Constitution which Jefferson could not accept. The glaring absence of a declaration of rights brought on a discussion with James Madison which lasted through the period of ratification into the first few months of the new government. The eligibility of the president for re-election, Jefferson thought, would lead to a form of permanent incumbency which, he considered, would subvert republican government. Jefferson, like many of his contemporaries, feared executive rule which had not been delineated within a system of constitutional checks and balances.<sup>5</sup>

This thesis will attempt to explain Jefferson's reaction to the Constitution of 1787 and how his opinion of the Constitution changed

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Max Farrand, The Framing of the Constitution of the United States, (New Haven, Conn.: The Yale University Press, 1913), 77-79. Hereafter cited as Farrand, Constitution.

from disapproval to a hearty, though qualified, acceptance of it.

Jefferson did not want to see the Articles of Confederation superceded as has been previously mentioned. He considered them as forming an ideal democratic government. Nevertheless, his diplomatic work caused him to realize that they were inadequate for a government which had to take its place on an equal basis with the powers of Europe. Jefferson was no iconclast.<sup>6</sup> He wanted to reform slowly. He would have been satisfied with the amending of the Articles by several amendments and not overthrowing the former instrument of government in favor of the Constitution of 1787.

It will be necessary to determine Jefferson's opinion of the Philadelphia Convention which framed the new constitution between May 10 and September 17, 1787. He had not been fully aware of the intentions of the convention and was chagrined when he learned that the democratic Articles of Confederation were to be shelved.

Besides his years of experience as a diplomat, a legislator, and a lawyer, Jefferson had written on two different occasions, since 1776, two constitutions which he had hoped would have been the bases for the government of his state, Virginia. The first one, the Draft Constitution of 1776, he had composed hurriedly in June of 1776 while he was in Philadelphia working on the Declaration of Independence. He had sent it too late to have any effect on the deliberations of the Virginia Assembly which had completed its work. The constitution which was enacted failed to provide a democratic foundation for the state government. Shortly afterward, Jefferson as a member of the legislature promoted a liberal program of legislation which aimed at disestablishing the Anglican

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Jefferson to John Adams, November 13, 1787, Boyd, Papers, XII, pp. 350-51.

Church and providing for religious liberty, ending the entailing of estates, finding a means for emancipating the slaves, and codifying Virginia's laws.<sup>7</sup> He hoped in some way to achieve what the Virginia legislators of 1776 had failed to do.

The Virginia Constitution of 1776 had been enacted by an assembly which had not been elected and convened as a constitutional convention.<sup>8</sup> Since this was the case, Jefferson considered the instrument of government to be invalid.<sup>9</sup> In addition, the constitution had never been presented to the people for ratification. Jefferson hoped for a constitutional convention to frame a new constitution. In 1783, when there was the possibility that such a convention might be convened, Jefferson prepared his second constitution. He was frustrated for a second time. He could not take part in the framing of a republican government for his state in 1776 and the convention of 1783 never materialized.

Jefferson's constitutional thought finally found expression and dissemination when he published his Notes on Virginia while in Paris in 1786. He appended his 1783 constitution to the Notes under the title, Draught of a Fundamental Constitution for the Commonwealth of Virginia.<sup>10</sup> The second composition included the ideas of the 1776 draft. Jefferson's

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<sup>7</sup> Adrienne Koch and William Peden, eds., The Life and Selected Writings of Thomas Jefferson, (New York: The Modern Library, 1944), 38, 39, 40-41, 44, and 47. Hereafter cited as Koch and Peden, Writings.

<sup>8</sup> "Notes on Virginia," Ibid., 239-40 and 242.

<sup>9</sup> "Notes on Virginia," Ibid., 240-41.

<sup>10</sup> Saul K. Padover, ed., The Complete Jefferson, (New York: Duell, Sloan, and Pierce, 1943), "Draft of a Constitution for Virginia," 110-20. Hereafter cited as Padover, Complete Jefferson.

constitution provided for a tripartite form of government with the essential power of government vested in the legislature. He did this by having the system of checks and balances operate in favor of the legislature. The executive and judicial branches were appointed by the legislature and subject to it.<sup>11</sup> There were specified duties which were delegated to each branch, but implied powers belonged to the legislature. In effect, the executive remained solely an administrative department of the legislature.<sup>12</sup> The American experience with arbitrary executive rule made Jefferson and his contemporaries suspicious of any kind of government which was responsible to other than the legislature, the direct agency of the people. The colonial governors of Virginia had been responsible to London and had governed without giving due recognition to the colonial legislature.<sup>13</sup>

Jefferson was a devoted advocate of constitutional government. He believed in a government of law which preserved the dignity of all citizens. His experience equipped him to be an interested observer and an informed critic of both the Constitutional Convention and the Constitution of 1787. As a member of the Continental Congresses, a legislator of Virginia, and a lawyer, he evaluated empirically his study of the structure of republican government and continually exchanged his observations and opinions on it with friends and colleagues. As a diplomat he was able to view the Confederation and the Constitution from

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Padover, Complete Jefferson, 114-15 and 116-17.

12

Ibid., 114.

13

Max Savelle, The Foundation of American Civilization, (New York: Henry Holt and Company, 1942), 626-28.

abroad and obtain at first hand the reactions of Europeans.

## I. JEFFERSON IN FRANCE

Thomas Jefferson had gone to France to join Benjamin Franklin and John Adams in the negotiation of treaties of commerce and amity with a multitude of European nations. According to the instruction of Congress of October 29, 1783, the ministers- Jefferson, Franklin, and Adams- had been empowered to negotiate treaties with Russia, the Hapsburg Empire, Prussia, Denmark, Saxony, Great Britain, Spain, Portugal, Genoa, Tuscanny, Rome, Naples, Venice, Sardinia, and the Ottoman Porte. The policies of the European powers of favoring their own interests and economies were to become formidable barriers for the ministers to penetrate. In addition, the principles outlined in the congressional instructions further restricted negotiations for treaties. These principles were novel in diplomatic circles and in direct conflict with the monopolistic restrictions of the maritime nations of Europe.<sup>1</sup> These liberal American ideas favored free trade, freedom of the seas, and the most-favored-nation principles which granted to a foreigner the same rights and privileges of the citizen.

The ministers drew up as a basis of negotiation a general form of a treaty. It espoused the principles which had been outlined in the instructions of Congress. In effect, the treaty form called for a more

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"Instructions to the Ministers Plenipotentiary appointed to negotiate Treaties of Commerce with the European Nations, May 7, 1784," Andrew A. Lipscomb and Albert Ellery Bergh, eds., The Writings of Thomas Jefferson, (Washington, D.C.: The Thomas Jefferson Memorial Association, 1904), XVII, pp. 21-27. Hereafter cited as Lipscomb and Bergh, Writings of Jefferson.



definitive understanding of belligerency and neutrality. The Americans considered of utmost importance the concept of general neutrality in time of war. This principle, if accepted, would protect merchantmen from capture or molestation by privateers in time of war. The individual and his vocation were to be divorced from matters of national policy and not to be involved in it. The ministers tried to counter the development of the concept of total war which had its inception during this period. The Americans had to bargain for real and necessary concessions to protect their commerce and national integrity in a world where military force had been a matter of diplomatic policy. The United States needed to preserve its independence. This could only be accomplished by having Europe recognize and accept it without reservation.

Adams and Jefferson were both cognizant of the dangerous implications of alliances to American freedom. Since both were aware of European policies and machinations, they realized that treaties were useless unless both parties were considered equals and both derived mutual benefits. Adams had discussed with Jefferson the need to be wary of being duped into granting extensive privileges beyond what already constituted a generous offer. In this respect Adams advised

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"Instructions to the Ministers Plenipotentiary," Lipscomb and Bergh, Writings of Jefferson, XVII, 23-25.

3

"Autobiography," Koch and Peden, Writings, 62.

4

Dumas Malone, Jefferson and the Rights of Man, (Boston: Little, Brown and Company, 1951), 21-22. Hereafter cited as Rights of Man.

5

John Adams to Jefferson, September 4, 1785, Lester J. Cappon, ed., The Adams-Jefferson Letters, Chapel Hill: The University of North Carolina Press, 1959), I, p. 61. Hereafter cited as A-J Letters.

Jefferson that France had to be watched. Shortsighted mercantilism formed a one way policy which denied to others any advantages enjoyed by France. Jefferson, on the other hand, suspected that if the Americans ever lost their happiness and morals, it would come about because of the corrupting influence of wealth gained by trade and industry. For this reason, he considered agriculture the highest and purest form of work and also "the best preservative of morals."<sup>6</sup> Jefferson was becoming, in the process of time, extremely anxious for the maintenance of American freedom and happiness. The purpose of government was to bring about this state; and American republican government, in Jefferson's opinion, had accomplished it. There then had to be the effort not only of protecting, but also keeping, that republican government from being either subverted at home or destroyed from abroad.

At the same time that Jefferson had reservations about Europe and feared the consequences of involvement, he found a reluctance on the part of the Europeans to accept the Americans. Jefferson lamented the difficulty he faced in negotiating commercial arrangements in Europe. The main cause for European aversion was the American principle of the freedom of the seas. Cautious and always thinking of all possible eventualities, the European states did not see the liberal advantages in the concept. Instead, it appeared as a two-edged sword. They rejected it and would not make a pact attesting to the freedom of the seas.<sup>7</sup>

<sup>6</sup>

Jefferson to John Blair, August 13, 1787, Boyd, Papers, XII, 28. See also "Notes on Virginia," Koch and Peden, Writings, 280-81.

<sup>7</sup>

Nathan Schachner, Thomas Jefferson, A Biography, (New York: Appleton-Century-Crofts, Inc., 1951), I, pp. 142-43. Hereafter cited as Schachner.



There was one exception: the three commissioners were able to consummate a treaty with Prussia. This slim achievement, considering that trade with land-minded Prussia amounted to almost nothing, gave international recognition to the concept. As Nathan Schachner pointed out, old Fritz yielded little; but he did give the United States a beginning by which the same concession could be wrung from other nations.

Jefferson ran into another major obstacle in the negotiating of commercial treaties. Especially, in England there was the opinion that Congress did not have the power to enter into treaties of commerce<sup>8</sup> because its regulation was under the jurisdiction of the states. Although Adams was the minister to England, Jefferson had had a conversation with an Englishman who apprized him of the English situation. Jefferson also learned that the European did not think that Congress was able to enforce at home either its own enactments or treaties<sup>9</sup> which it had ratified.

Jefferson did find his own negotiations embarrassed because of<sup>10</sup> the nature of Congress under the Articles of Confederation. According to the Articles, the commerce of a nation was subject to regulation by the states unless there existed a commercial treaty between the United States and that nation. This treaty then gave the jurisdiction of the regulation to the Congress because all treaties

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Jefferson to Adams, July 7, 1785, A-J Letters, I, 38-39.

9

William Carmichael to Jefferson, July 15, 1786, Boyd, Papers, X, 138. Specifically on the British reluctance to deal with Congress see: Jefferson to John Adams, July 7, 1785, A-J Letters, I, 38-39 and American Commissioners to John Jay, April 25, 1786, Boyd, Papers, IX, 406-07.

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A-J Letters, I, 61.

entered into by Congress were binding on the states. <sup>11</sup>

These treaties could not, however, prevent the state legislatures from imposing duties or restrictions on the commerce with the contracting nation. Jefferson admitted that this qualified regulation, which did not allow Congress to impose duties or restrictions uniformly throughout the states, was imperfect. The nature of the Confederation left the essential sovereignty to the states. In actuality, the regulation of the commerce remained within the jurisdiction of the <sup>12</sup>

state. <sup>12</sup> The Europeans understood this as weakness and disunity.

The Europeans took further note of the apparent weakness of the <sup>13</sup> American central government. In a world where absolutism was the fashion, the United States did not compare favorably with the contemporary ideal. In many respects, Prussia with its stable and efficient government captured the imagination of Europe.

Jefferson was sensitive of the criticism and of the estimation which he received concerning his government. He became more convinced of the need for Congress to have more extensive powers of administration. In particular, these were to deal with commercial and economic matters. <sup>14</sup>

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<sup>11</sup> "Articles of Confederation," Articles VI and IX, Farrand, Constitution, 214 and 216. Also "Answers to Demeunier's First Queries," January 24, 1786, Boyd, Papers, X, 14-15.

<sup>12</sup> "Answers to Demeunier's First Queries," January 24, 1786, Ibid., X, p. 15.

<sup>13</sup> The European attitude toward the United States came out in various negotiations that were being carried on in the decade of the eighties: in the Algerian Situation, see Carmichael to Jefferson, July 15, 1786, Ibid., X, 137-39; in the intricate dealings to settle the Mississippi claims with Spain, James Madison to Jefferson, August 12, 1786, Ibid., X, 229-36; and Abigail Adams' comments on the unfavorable press the United States was receiving in England, Abigail Adams to Jefferson, October 3, 1785, A-J Letters, I, p. 80.

<sup>14</sup> "Answers to First Queries," Boyd, Papers, X, 16-17.

In this manner, it would be demonstrated to the European nations that Congress did have the power to make treaties and enforce them at home. The granting of the power of actual regulation to Congress, Jefferson thought, would give the appearance of a respectable and stable  
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government.

Another matter which pointed out the American weakness was the inability of Congress to meet the payment of interest on the debt held by the French banks. Although Congress was having some financial difficulty because of the acute specie situation of the country, the  
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United States was not bankrupt as the French considered. The failure to make payment on the interest of the debt had been just a matter of confusion and procrastination of the Board of Treasury and the  
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Congress. They did not think to provide Jefferson and Adams with adequate authority to withdraw funds on deposit in Holland. Hence,  
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American credit rapidly collapsed in France. French bankers needed money to bolster up the government as well as their own collapsing

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15 Jefferson to Madison, February 8, 1787, Boyd, Papers, IX, 264.

16 Jensen, New Nation, 310.

17 The Commissioners of the Treasury to Jefferson, February 16, 1787, Boyd, Papers, XI, 160-61; William Short to Jefferson, May 21, 1787, Ibid., XI, 374; and Jefferson to Adams, July 1, 1787, Ibid., XI, 517. The financial administration of the ministers was both a care and a matter of embarrassment. They were continually being beseeched by the French for money due on the interest which had been in arrears. To add to their difficulties, Congress gave them little support. See Jefferson to Adams, September 4, 1785, A-J Letters, I, 60. The problem became worse and in 1787, it was critical.

18 Jefferson to John Adams, September 4, 1785, Ibid., I, 60, and John Adams to Jefferson, September 11, 1785, Ibid., I, 63. The outcome of this situation is reflected in William Short to Jefferson, Boyd, Papers, XI, 374. Also Jefferson to Madison, Ibid., XI, 663-64.

enterprises. They began to be impatient with the slowness of American payments. The extension of time and further credit could not be as liberally granted as had previously been done.

The American financial situation, however, became acute. The specie situation, as has been mentioned, created some difficulty collecting taxes from a population which never did like to pay taxes. Their first economic measures were to curtail their contributions, as they called them, to Congress. Congress did not have the power to levy taxes under the Articles of Confederation. For its budgetary requirements, it assessed each state. With a shortage of funds at home, Congress had to borrow money abroad to meet its foreign obligations.

American credit in Europe was shaken by the French bankers and the apprehensive situation created by the financial condition of the French government. Even in Holland where American credit had been sound, Jefferson learned that it began to be disparaged. Nonetheless, the Dutch political situation caused the prospect of foreign, even American, investment to be highly valued. Political disturbances and the threat of civil war provided sufficient reason for the desire to export money from the country. Thus Jefferson and Adams worked at trying to transfer

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Jensen, New Nation, 304 and 417.

20

Andrew Cunningham McLaughlin, The Confederation and the Constitution, 1783-1789, (New York: Harper and Brothers, 1907), 80-82. Hereafter cited as McLaughlin, Confederation and Constitution. Also "Autobiography," Koch and Peden, Writings, 85.

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Jefferson to Madison, August 2, 1787, Boyd, Papers, XI, 663-64.

22

"Autobiography," Koch and Peden, Writings, 86.

the American debt from France to Holland. This move, Jefferson hoped,  
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would forestall the loss of national credit.

Practically all of the American foreign debt which was held by the French and Dutch banking houses had been contracted during the War for Independence. The maintenance of the interest had to be financed, in part, by further loans. Jefferson did not like this situation. He hoped that American credit would collapse. Then the Americans would be forced to pay their foreign debt in quick order and in the future exercise  
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restraint and economy. In addition, such a calamity would make

possible certain reforms in the government. The main benefit would be that the United States would gain its financial independence of Europe.

Since Jefferson had taken up his position in France, Congress had deteriorated as the governing body of the country. William Temple Franklin, the grandson of Benjamin Franklin, informed Jefferson of the pathetic state of affairs of early 1786. Congress had been unable to  
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carry on its work because of the lack of a quorum. Similar

information had been received from James Monroe, who fixed the cause of  
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absenteeism on the lack of interest in national affairs. Since the power of government really rested in the states, more interest had been  
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shown in state government than in the federal. It must be remembered

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23 Jefferson to John Jay, September 26, 1786, Boyd, Papers, X, 405-06.

24 Jefferson to Archibald Stuart, January 25, 1786, Ibid., IX, 217-18.

25 William Temple Franklin to Jefferson, January 18, 1786, Ibid., IX, 178-80. See also Jensen, New Nation, 417.

26 James Monroe to Jefferson, May 11, 1786, Boyd, Papers, IX, 510.

27 Jensen, New Nation, 417.



that in 1776 even Jefferson felt it was more important to be in the Virginia Assembly taking part in the framing of a new government than leading a committee to draw up the Declaration of Independence.

Monroe's assertions were substantiated by John Jay. Without the meeting of Congress, there existed no government.

In order for the central government to be functioning, there had to be a quorum of nine states represented in the Congress. When Congress was in recess, the government was to be carried on by a "Committee of the States" as provided for by the Articles of Confederation. This Committee never operated effectively to maintain the government. The government of the United States during the entire

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Schachner, I, 137.

29

John Jay to Jefferson, May 5, 1786, Boyd, Papers, IX, 450-51.

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Under the provisions of Article IX of the Articles of Confederation, Congress had the authority to appoint a committee to sit during the recess of Congress. See "Articles of Confederation," Farrand, Constitution, 220. The committee, designated as "A Committee of the States," was comprised of one delegate from each state. This committee had the power to appoint other committees and civil officers to manage the general affairs of the United States. In many respects, the other powers delegated to the committee made it an executive function of the Congress. But it did not function efficiently to be effective. Jefferson's lament, which he made in his "Autobiography," was that it was a quarrelsome body and quickly disintegrated, thus leaving the "government without any visible head." See "Autobiography," Koch and Peden, Writings, 56. Neither Andrew McLaughlin nor Merrill Jensen mentioned this committee in their respective works on the development of the executive department of the government under the Articles of Confederation. Both writers mentioned that the Confederation did provide the atmosphere for the formation of executive departments but failed to develop what seemed to be a real beginning toward an executive. Considering Jefferson's opinion as found in his letter of August 4, 1787, to Edward Carrington, the Confederation did not make use of any expediency to solve the problem of the executive function itself also being the executive had to devote precious time to executive considerations without regard to their degree of importance. See Jefferson to Carrington, August 4, 1787, Boyd, Papers, XI, 679.

winter of 1785 and 1786, according to the retired Franklin, only had  
seven or eight states assembled in Congress.<sup>31</sup> The reality of  
government depended not, it seemed, on the Articles of Confederation  
as its basis but on either a quorum or the cordial interplay of strong-  
minded individuals.

The movement to give wider powers to Congress gained momentum by  
1786. The argument for these powers had been based on the experience of  
several years of government, and it began to take effect. Congress  
needed to have an independent income, to regulate commerce, and to pay  
the foreign and domestic debt. There was also the fear that if Congress  
were not given a broader base on which to operate, the federal  
government would disintegrate. Not only would the government  
disintegrate but the union was in jeopardy. Under this stress, sharp  
divisions of opinion had, by 1786, become visible.

The nationalists sought a stronger national government. Their  
aim to achieve this was not by reforming the Articles but by forming  
a new government.<sup>32</sup> The federalists, seeing that the nationalists  
were gaining strength, began to compromise and be willing to concede the  
desired reforms to improve the states of the central government. Thus  
there emerged varying degrees of opinion on the nature of the central  
government.

The moderate and prevailing view sought to amend the Articles of  
Confederation so that Congress would have greater powers in matters of  
national and foreign consequence. This movement for the granting of

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Benjamin Franklin to Jefferson, March 20, 1786, Boyd, Papers, IX,  
349.

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Jensen, New Nation, 417 and 245-47.

added power to Congress began in the Virginia Assembly. The purpose behind the resolution calling for a commercial convention was "to rescue . . . the Union and the blessings of liberty staked on it from

33 impending catastrophe." James Madison promoted the motion. When

Jefferson heard of the possibility of giving Congress added powers, he became encouraged. 34 The central government would thus have a firmer

hand on national affairs.

Jefferson specifically defined his own position on the movement toward a stronger central government. He favored giving Congress added powers in the areas of having an independent income, regulating commerce, and paying the debt. He wanted a strong central government in so far as "to everything external we be one nation only, firmly hooped together.

35 Internal government . . . each state should keep for itself." He favored the division between the states and the nation as a whole of the responsibilities of government. 36 He was neither a nationalist, nor

a federalist. As he later stated to Francis Hopkinson, he did not 37 subscribe to either faction, nor was he a trimmer between them.

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Irving Brant, James Madison The Nationalist: 1780-1787, (Indianapolis, Ind.: The Bobbs-Merrill Company, 1948), 316. Hereafter cited as Brant, Nationalist.

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Jefferson to Madison, February 8, 1786, Boyd, Papers, IX, 264.

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Jefferson to Madison, February 8, 1786, Ibid., IX, 264.

36

Caleb Perry Patterson, The Constitutional Principles of Thomas Jefferson, (Austin, Texas: University of Texas Press, 1953), 33. Hereafter cited as Patterson, Constitutional Principles.

37

Jefferson to Francis Hopkinson, March 13, 1789, Boyd, Papers, XIV, 650.



Although Jefferson had been aware of the defects and shortcomings of the Articles of Confederation, he considered that it formed the best of all possible governments. The situation of the common people in France and England thoroughly disgusted him. The aspect of monarchical government had become absolutely repulsive to him. As loyal as he was to a government which was free of coercive force and temper, Jefferson was convinced of the need for reform to give solidity to the unity of the United States.

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Jefferson to Edward Carrington, August 4, 1787, Boyd, Papers, XI, 678; Jefferson to Joseph Jones, August 4, 1787, Ibid., XII, 34; and Jefferson to George Washington, August 14, 1787, Ibid., XII, 36.

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Schachner, I, p. 241. Schachner quoted from Jefferson's letter to Edmund Randolph, February 15, 1783.

## II. JEFFERSON'S REACTION TO THE ANNAPOLIS AND PHILADELPHIA CONVENTIONS

James Madison had initiated the resolution in the Virginia House of Burgesses which would grant greater powers to Congress in order to provide for its budgetary needs and to free it from the caprices of the individual states. The resolution called for a commercial convention of the states to meet and propose new amendments for the Articles of Confederation. The end result would place Congress in a more independent role and allow it to concentrate on problems of the union and the nation as a whole.<sup>1</sup>

Jefferson received from Madison the pertinent information on the principles comprising the resolution of the Assembly and an explanation of the desired effect of the granting to Congress the added powers over all commerce. In London, John Adams also received similar news from other sources. There had been previous attempts to revise the Articles of Confederation which had been proving to be to the nationalists an inefficient instrument for a federal government.<sup>2</sup> The critical state of the federal government brought its existence into serious question.

<sup>1</sup>

Madison's motion sought to provide Congress with the regulation of commerce and an income from an impost. The movement for granting a five percent impost to Congress had failed to get approval of the thirteen states in 1781 and 1783. See Jensen, New Nation, 58 and 404. Also Madison to Jefferson, January 22, 1786, Boyd, Papers, IX, 198, 203-04, and Brant, Nationalist, 381.

<sup>2</sup>

Jensen, New Nation, 400-07, and McLaughlin, Confederation and Confederation, 169-73.

Jefferson had become aware of the inability of the government to cope effectively with the matter of internal commerce. He also shared Madison's views on the vices of interstate rivalry and the commercial barriers which had been thrown up to frustrate neighboring states.<sup>3</sup> Thus the total situation of the United States presented the requisite evidence to those who advocated a more energetic and stable central government. Jefferson had insisted on being kept informed of anything that could possibly transpire in the amending of the Articles. While Madison explained the situation of the country to Jefferson, he never demonstrated as much optimism as his fellow Virginian who seemed to have the assurance that the inexorable process of history would vindicate his national hopes and dreams. For Madison, the commercial convention which was to meet at Annapolis in September, 1786, was the last chance for redemption.<sup>4</sup>

The Annapolis Convention had been called for the first Monday of September, 1786. Nonetheless, the convention did not get under way on its convening date. Instead, several weeks went by before there was a sufficient number of delegates with which to begin its business. Although only five states were represented by their delegations present at the convention, four others had appointed commissioners who never

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Madison to Jefferson, March 18, 1786, Boyd, Papers, IX, 334.

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Madison acted as the prophet of doom for the most part. He, however, was not alone in citing the faults, vices, and the impossible and unrealistic machinery of government provided for under the Articles of Confederation. Thus he became the primus inter pares of a group of nationalists who collated the facts pointing up the negative aspects of the Confederation. Brant, Nationalist, 378-89, and McLaughlin, Confederation and Constitution, 144-45 and 173-76.

5 arrived. Realizing such a small group could not speak for the entire country, the convention adopted a resolution recommending to the states that a plenipotentiary convention be held in Philadelphia on the second Monday of May, 1787. And so, the first step had been taken toward a  
6 general revision of the Articles of Confederation.

Madison had expected that the Annapolis Convention would not in itself be a productive convention. As early as March, 1786, he had begun to have doubts about its outcome. Yet it was not the best move  
7 that could be made under the existing conditions. The internal financial problems of Virginia which had been aggravated by the lack of circulating specie and a drop in the price of tobacco precluded any  
8 adverse opinion on the forthcoming convention. On August 12, 1786, Madison's spirits were again lowered by news which he had heard and relayed on to Jefferson. The desire was being expressed by people in and out of Congress to make the Annapolis Convention a preliminary meeting to a plenipotentiary convention which would have the power to  
9 amend the Articles. Madison was not receptive to this intention because he did not feel that the time was propitious for a more drastic

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5 Farrand, Constitution, 8. Madison reported to Jefferson that nine states had appointed delegates. Madison to Jefferson, August 12, 1786, Boyd, Papers, X, 229.

6 Congress also called for a similar convention to take place at the same time for the "express purpose of revising the articles of confederation." McLaughlin, Confederation and Constitution, 182-83. Also see Farrand, Constitution, 11

7 Madison to Jefferson, March 18, 1786, Boyd, Papers, IX, 335.

8 Madison to Jefferson, May 12, 1786, Ibid., IX, 519.

9 Madison to Jefferson, August 12, 1786, Ibid., X, 233.

revision "beyond a Commercial Reform."

Jefferson later learned from Louis Guillaume Otto, the French  
charge d' affaires and representative of New Hampshire to the  
Convention, that the convention had been poorly attended.<sup>11</sup> Its only  
accomplishment had been to send a report to the state legislatures calling  
for another convention to which delegates be given wider provisions to  
consider steps to maintain the harmony and national stability of the  
United States.<sup>12</sup> Otto, in addition, had informed his government that  
he had heard rumors to the effect that the only purpose for the  
Annapolis Convention would be to prepare the way for another meeting.  
He explained that the report sent to the states had been rushed through  
the convention while there were only five states in attendance. The  
presence of the other four would have presented difficulties.<sup>13</sup>

While expecting news of the results of the Annapolis Convention,  
Jefferson wrote to his European correspondents about this assembly of  
states and what would possibly come from it.<sup>14</sup> However, from Madison  
came word that the proposed Philadelphia meeting would entail a general  
revision and amending of the Articles.<sup>15</sup> Such a gathering could not

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Madison to Jefferson, August 12, 1786, Boyd, Papers, X, 233.

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Farrand, Constitution, 38.

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Louis Guillaume Otto to Jefferson, October 15, 1786, Boyd, Papers,  
X, 466.

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Farrand, Constitution, 9.

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Jefferson to William Carmichael, August 22, 1786, Boyd, Papers, X,  
286-87; Jefferson to C.W.F. Dumas, September 22, 1786, Ibid., X,  
397; Jefferson to Lafayette, August 24, 1786, Ibid., X, 293; and  
Jefferson to Thomas Barclay, August 31, 1786, Ibid., X, 313-14.

15

Madison to Jefferson, December 4, 1786, Ibid., X, 574-75.

be realized unless all the states would send the properly authorized delegates.

In the interim between the two conventions, the Shays' Rebellion and the more general movement for the adoption of paper money had absorbed the attention of the country.

The Shays' Rebellion was supposed to have acted as a catalyst in the movement for a more energetic form of government. One of the contemporary arguments against the Constitution had been that the Constitutional Convention had been influenced by the insurrection.<sup>16</sup>

<sup>17</sup> Jefferson also shared this view. Nonetheless he looked at the rebellion as being both right and purposeful. He considered it as an expression of the people against unjust and inconsiderate government<sup>18</sup> and a testimony of the overall happy state of the thirteen states.

Only one rebellion in thirteen states in eleven years, Jefferson<sup>19</sup> considered, was a good record.

A contrasting opinion was held by George Washington. The major sources of his information besides the newspapers were Generals Henry Knox and Benjamin Lincoln.<sup>20</sup> Both officers were natives of

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<sup>16</sup> Uriah Forrest to Jefferson, December 11, 1787, Boyd, Papers, XII, 416.

<sup>17</sup> Jefferson to William Stephens Smith, November 13, 1787, Ibid., XII, 356-57.

<sup>18</sup> Jefferson to Carrington, January 16, 1787, Ibid., XI, 49, and Jefferson to Madison, January 30, 1787, Ibid., XI, 92-93.

<sup>19</sup> Jefferson to David Hartley, July 2, 1787, Ibid., XI, 526.

<sup>20</sup> George Washington to Benjamin Lincoln, March 23, 1787, John C. Fitzpatrick, ed., Writings of George Washington, (Washington, D.C.: United States Government Printing Office, 1939), IXXX, pp. 181-82. Hereafter cited as Fitzpatrick, Washington.



Massachusetts. They proceeded to give the general their views of the insurrection. The impact of their statements about this calamity caused Washington to abandon his retirement at Mount Vernon and to assume a more active role in the political affairs of the country. <sup>21</sup> Washington feared that the rebellion would spread to other states. He did not consider Massachusetts as being unique, for other states contained <sup>22</sup> similar incendiary materials out of which to make a rebellion.

Washington passed onto Madison some of the ideas which, in his opinion, motivated the adherents of the insurrection in Massachusetts. One idea was that since the Revolution had been a common cause and independence gained, then all the property of the country had been won by all people and should be the common property of all the people. Another was the annihilation of all private and public debts. At the center of the insurrection was the issue of paper money as legal <sup>23</sup> tender.

Paper money had been given much attention in each of the states during the decade of the eighties. The drainage of specie to pay <sup>24</sup> pre-war and war debts created some financial hardship. The conservative elements feared the use of paper money and vigorously opposed

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<sup>21</sup> Jensen, New Nation, 250.

<sup>22</sup> Washington to David Humphreys, October 22, 1786, Fitzpatrick, Washington, IXXX, 26-28. John Jay made a similar remark about the rebellion spreading to Jefferson in a comment on the insurrection. John Jay to Jefferson, October 27, 1786, Boyd, Papers, X, 488-89.

<sup>23</sup> George Washington to James Madison, March 5, 1787, Fitzpatrick, Washington, IXXX, 50-52. Later Madison, writing to Jefferson, related to him along with the changes in the Massachusetts government because of the April elections that there was a possibility of an issue of paper money. Madison to Jefferson, April 23, 1787, Boyd, Papers, XI, 307.

<sup>24</sup> Jensen, New Nation, 325-26.

25 it. The opponents of paper money associated its use with democracy  
26 of which they wanted no part.

In the atmosphere of rebellion and the clamor for paper money,  
the country prepared for the Philadelphia Convention. The prospect of  
the convention aroused polar reactions. There were those who bitterly  
opposed it and considered it an usurpation of duly constituted  
27 authority. These people asserted that only Congress could call such  
a convention and that only by the provisions of the Articles could the  
government be revised. So long as such spirits controlled the state  
legislatures, several state delegations could not be assembled until  
the last minute. However, the dissenters did not have the strength for  
a concerted action against the growing national movement to strengthen  
the union. They were over-ridden by the popular expectations of  
positive gains from such a convention and by the Congress which issued  
28 a call for a convention to revise and amend the Articles.

Since Jefferson had gone to France, the sentiment for the  
necessary reforms had been growing in the United States. He found that  
his own constitutional ideas were beginning to be accepted. Although  
he had heretofore expressed reservations about government that had been  
given too many powers and too much freedom, he realized the importance  
29 of reform. He even caught enough of the general enthusiasm for the

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25 Jensen, New Nation, 313.

26 Ibid., 426-27.

27 Madison to Jefferson, February 15, 1787, Boyd, Papers, XI, 154;  
Madison to Jefferson, March 19, 1787, Ibid., XI, 219; and Carrington  
to Jefferson, April 24, 1787, Ibid., XI, 311.

28 Jensen, New Nation, 421.

29 Jefferson to Madison, December 16, 1787, Boyd, Papers, X, 603.



coming convention to look forward to it.

To Madison, besides expressing his feelings on the separation of the powers of government, he mentioned reforms along limited lines by which the powers of the federal government would be properly increased to handle foreign affairs. At the same time, federal power over internal state matters would be restricted. Fearing centralized authority as he saw it in Europe, and especially in France, Jefferson would be satisfied if the United States exhibited only the facade of unity. Foreign nations would view the united front and be forced to respect the new nation.

Jefferson hoped a thorough-going reform would produce an executive branch of the government. He had advocated in the past the separation from Congress of the "Committee of the States" as provided for in Article IX of the Articles of Confederation. The revision of this branch of the government would provide for an executive committee to function during the meeting of the Congress to handle all executive business so that Congress could concentrate solely on legislative matters. Under the revision, the "Committee of the States" would also continue to function as the executive during the adjournment of

<sup>30</sup>  
Congress. Up to this time, Jefferson had not accepted the reality of the fact that this committee failed to function as provided for in the Articles because of incessant disruptions owing to personality  
<sup>31</sup>  
clashes.

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Jefferson to Madison, December 16, 1786, Boyd, Papers, X, 603 and "Autobiography," Koch and Peden, Writings, 56-57.

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Schachner, I, 225.

Jefferson exhibited an optimism about the convention which demonstrated the hope he had for the future of the amended Articles of Confederation. He thought in terms of those amendments which would make Congress the supreme functionary of the federal government with independent executive and judiciary branches. Nevertheless, in practice, these branches would be only semi-autonomous departments of Congress.

The essential spirit of the Articles had to be preserved. Jefferson had not been aware of the change in the consensus of opinion that had taken place in the United States since he had left. Jefferson's stay in France had removed him from the current of thought which had undergone drastic revision from that of the revolutionary and immediate post-war days.<sup>32</sup> Although he was still exuding the ardor of liberty and independence, sentiment at home had been cooling down. Serious and practical thinking was reigning instead.<sup>33</sup> Being caught up in the pre-revolutionary trends of France, Jefferson never ceased to think as a rebel.<sup>34</sup>

Not all of Jefferson's correspondents spoke of impending doom. Some did see the importance of telling him of the alteration of the

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Jefferson to Madison, January 30, 1787, Boyd, Papers, XI, 92-93; Carrington to Jefferson, June 9, 1787, Ibid., XI, 408; Jefferson to Carrington, January 16, 1787, Ibid., XI, 48-50; and Jefferson to William Stephens Smith, February 2, 1788, Ibid., XII, 557-58. For Jefferson's own admission of being out of touch with the contemporary spirit see Jefferson to David Humphreys, March 18, 1789, Ibid., XIV, 679.

33

Jensen, New Nation, 427. Jensen's thesis demonstrated to what extent the Confederation worked to adjust to nationhood and its problems.

34

"Autobiography," Koch and Peden, Writings, 31.

climate of opinion which had taken place on account of the economic problems, the unsettled frontier situation with the British and the Spanish, the popular movement- the Shays' Rebellion, and also the insistence by the debtor class for paper money. For the most part, these matters involved either treaties or other similar arrangements which, when ratified by Congress, bound the states.

The inability or the reluctance of the states to live up to their contractual obligations with Congress did not greatly concern Jefferson as it did others.<sup>35</sup> Conformity to the decisions of a more powerful

Congress could possibly involve the use of force. This brought up the subject of coercion in government, which would produce the double effect of compelling obedience as well as inspiring self-confidence among the states and the individual citizens.<sup>36</sup> Jefferson shuddered as he gaged

the extent to which his fellow Americans were willing to part with their sovereignty to a central, impersonal government for the mere sake of stability and security.<sup>37</sup> From afar, he did not see the threat to the republic of the anarchy of popular movements. As for the menace of monarchical aspirations on the part of some, he felt that those who wished a king to rule over them, should spend a short time in France.

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Jefferson did not like force or its use in spite of the ends. But at times he possibly became exasperated and then would justify the application of it. In 1786, when the treasury was almost empty because the states would not pay their shares to Congress, Jefferson stated to Monroe that there would never be any money in the treasury until "the Confederacy shews it's teeth." It must be remembered also that Jefferson wrote this at a time when he was having difficulties with the French over the default of the payment of interest owed them. Jefferson to James Monroe, August 11, 1786, Boyd, Papers, X, 225.

36

Carrington to Jefferson, June 9, 1787, Ibid., XI, 408.

37

Jefferson to Carrington, January 16, 1786, Ibid., XI, 49.

Then they would be permanently cured of that mania. Nevertheless, Jefferson did not despair of his faith in the triumph of good republican government over the despotism that might be conjured up by the attempts of the youthful country to govern itself.

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The Philadelphia Convention, which was to have convened on the second Monday of May, the fourteenth, did not have a sufficient number of states registered to organize itself until the twenty-fifth of May. Getting under way inauspiciously, it proceeded to its business by first electing General Washington its president. Jefferson continued to receive word of the Convention as it continued in session. From both Washington and Madison, he heard of the slow progress made during its early days.

Knowing that Madison was a dominant figure in the Convention gave Jefferson much satisfaction. It must be remembered that Jefferson chose and purchased many books for Madison and thus subtly guided his study and research into the constitutions, republics, and confederacies of the past. Madison's scholarship not only gave him a perspective of what equipment was necessary for a central government republican in nature and national in intent, to survive the ravages of political storms but also the authority to speak as a political theorist. In this respect, Jefferson made a contribution to the Constitutional Convention.

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Jefferson to Benjamin Hawkins, August 4, 1787, Boyd, Papers, XII, 682.

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Farrand, Constitution, 196-97, and Brant, Nationalist, 13.

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Malone, Rights of Man, 87.

One matter which incurred Jefferson's displeasure and caused him to chafe was the imposition of secrecy on the deliberations of the Convention.<sup>41</sup> To avoid premature and unreasonable criticism before their work could be completed, the delegates strictly observed the silence imposed by oath. Madison and the others of the Convention, who corresponded with Jefferson, followed the rule faithfully. Humorously but succinctly, Francis Hopkinson, a member of the Convention, explained the reason for secrecy. "No sooner will the Chicken be hatch'd but every one will be for plucking a Feather."<sup>42</sup> Jefferson remained anxious, hoping that his basic ideas dealing with the functions of government would be given some recognition. His correspondents did not help him at all, for those who were of the convention just intimated as to what they were doing. Madison, who took copious notes, promised to give him a complete review of the deliberations later. Jefferson might have received some advance information if Madison would have had his cypher book with him to encode his September letter. Still Jefferson, like everyone else outside the Convention, received no valuable information.<sup>43</sup> He considered the secrecy rule an abominable precedent and the denying the value of public discussions as sheer ignorance.<sup>44</sup>

Although Edward Carrington was not a member of the Convention, he provided Jefferson with more information on the Convention than did

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Jefferson to Adams, August 30, 1787, Boyd, Papers, XII, 69.

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Francis Hopkinson to Jefferson, July 8, 1787, Ibid., XI, 561.

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Madison to Jefferson, September 6, 1787, Ibid., XII, 102.

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Jefferson to Adams, August 30, 1787, A-J Letters, I, 196.

anyone else. Carrington had been a neighbor of Jefferson. He gave his impressions without reservation or fear that Jefferson would misunderstand them and take undue exceptions with his opinions. Although the rule of secrecy precluded the dissemination of information from the convention, the nature of the delegations and the personal opinions of the convention members revealed the prevailing attitudes. Carrington deduced that there were two possible alternatives for action. Firstly, the entire country might be consolidated. The states would then become merely subordinated courts for the administration of laws. The second alternative was that the federal government would be invested with complete authority in commerce, revenues, matters of federal organization of the states, rights of peace of war, and the power to negate any state legislation.<sup>45</sup>

Carrington added that the second choice would be more practical than the first. The former would be out of the question because of the diverse nature of the country. Each section had peculiar problems that could be dealt with only on a local basis. The other reason for its rejection was its tendency to facilitate despotic rule.

Carrington was sure that the final result of the Convention would be much in line with the second point. When Jefferson read this letter, he realized with apprehension that the Convention was not just drawing up a few amendments to be appended to the Articles of Confederation but a completely new instrument of government.<sup>46</sup> Carrington was certain that the federal government would have complete sovereignty over

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Carrington to Jefferson, June 9, 1787, Boyd, Papers, XI, 410.

46

Jefferson to Carrington, August 4, 1787, Ibid., XI, 678.



the state governments. He inserted the note that this would be good if such a government could be so constructed under a constitution and also if the executive power could be so defined so that it would not be  
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oppressive.

Thus Jefferson recognized the intent of the Convention which aimed at a thorough reform of the Articles. Some of the states had given, in effect, their delegates commissions without restrictions and limitations  
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which allowed them to promulgate such reforms. As Carrington had reported to Jefferson, the states which restricted their delegations lifted any imposed limitations and allowed them free sway at the  
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Convention. Jefferson confessed to Carrington that he did not think that such a complete reform was necessary and would not have gone so far. Convinced that the present form of government was the best of all possible government, he stated that the Articles only needed to have

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Carrington to Jefferson, June 9, 1787, Boyd, Papers, XI, 410.

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Carrington to Jefferson, June 9, 1787, Ibid., XI, 407.

49

Carrington to Jefferson, June 9, 1787, Ibid., XI, 407. According to Max Farrand, the Delaware commission created some consternation because of its restriction prohibiting its delegates from "changing the principle of the confederation of each state having an equal vote." Farrand, Constitution, 56. Merrill Jensen, on the other hand, hinted at a possible coup d'etat when he averred that the members of the Convention "decided to ignore their instructions and to create an entirely new government." Jensen, New Nation, 421. Carrington, as a contemporary observer, expressed the accepted position that states were requested to change the instructions and free their delegates "to render the Constitution of the Foederal Government adequate to the exigencies of the Union." Disproving Jensen's opinion, Farrand mentioned that the reason for the withdrawal of the New York delegation, except for Alexander Hamilton, was that the delegates, Yates and Lansing, believed that the Convention had progressed to a point where they considered that further participation on their part, would be to exceed their instructions. Farrand, Constitution, 105.

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its defects repaired.

Even though Jefferson knew what Carrington thought was the Convention's intent, he stoically held on to his own ideas in his letter to Francis del Verme, an Italian nobleman of Milan, who was interested in the United States. He told him of the Convention and the forthcoming amendments to the Articles. After having received Carrington's letter of June 9, and having sent him an answer on August 4, he wrote to del Verme on the fifteenth of August that the Convention at Philadelphia was considering investing Congress with exclusive authority in foreign affairs. The states would remain sovereign in domestic matters. A peaceful means would be devised for Congress to enforce its decisions on the states. In addition, the powers delegated to Congress under the Articles would be divided into their respective departments: executive, legislative, and judicial.<sup>51</sup> Apparently, Jefferson would not accept completely Carrington's observations and opinions.

Only when Jefferson read the final result of the Convention did he see the correctness of Carrington's position. Being so convinced of the nobility and the sterling properties of the Articles of Confederation, he could not visualize the necessity of doing away with<sup>52</sup> it.

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Jefferson to Carrington, August 4, 1787, Boyd, Papers, XI, 678-79.

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Jefferson to Francis del Verme, August 15, 1787, Ibid., XII, 42-43.

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Jefferson to Adams, November 13, 1787, Ibid., XII, 351.

### III. JEFFERSON'S REACTION TO THE CONSTITUTION

The Constitutional Convention completed its deliberations on September 17, 1787. The delegates present unanimously approved the document, and the Constitution was submitted to the country for ratification. The new plan of government was widely disseminated in printed form and appeared in many journals and newspapers. Jefferson had not been forgotten because he had begun to receive copies shortly afterwards.<sup>1</sup> In actuality, he was favored with many copies. It seemed as though each of his friends felt that he might have been forgotten.

Jefferson gave the Constitution a hurried perusal and formed opinions which were changed, in part, within the year through "reflection and discussion."<sup>2</sup> He approved of the new instrument as a whole, but like many other Americans he questioned the inclusion of certain articles and lamented the exclusion of others. His European experience and observation of society under despotic regimes made him acutely conscious of the effect of a government which understood no bounds with respect to the citizen and his rights. He strongly felt that there had to be safeguards in the Constitution to maintain the

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Jefferson to William Stephens Smith, November 13, 1787, Boyd, Papers, XII, 356.

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Jefferson to Francis Hopkinson, March 13, 1789, Ibid., XIV, 650-51, and Jefferson to Carrington, May 27, 1788, Ibid., XIII, 208.

democratic features of the American experiment. For this reason he had to reserve his complete approval until that time when the proper alterations would provide the basis of a truly democratic order of government.

In the meantime, Jefferson engaged in lively discussions in which he aired his views and examined those of others. Of significance were the dialogues between himself and the other men who were also to become presidents of the United States. The leading figure of this group was James Madison whose political thought inspiringly challenged Jefferson and brought out much of his reaction to the Constitution. It must be remembered, however, that the issues which would eventually lead to the formation of Jefferson's Republican Party had not yet come upon the scene. Jefferson's influence can only be understood in terms of the budding friendship that existed at the time. Although each man respected the opinions of the other, unanimity in political matters was not prerequisite to friendship. They exercised moderation in the voicing of their views to avoid incurring the displeasure of each other.

This respect could possibly explain Madison's reticence concerning his participation in The Federalist. He had not mentioned anything to Jefferson about these essays. However, Edward Carrington had sent Jefferson the first volume and promised the second as soon as it was available. He also intimated that the authors were Madison, John Jay, and Alexander Hamilton. When the second volume was ready,

Carrington asked Madison to include it in his mail to Jefferson. Thus Madison was forced to tell Jefferson of his role in The Federalist. In addition, he mentioned that he did not completely agree with the opinions of the other two, and neither did he have the opportunity to preview their articles before they went to press.<sup>4</sup>

Jefferson's discussion with John Adams was prematurely cut off. Apparently, the Constitution was a matter which caused Adams' temper to flare rather easily; and it became a sensitive spot. Only two letters were exchanged before Jefferson realized that tact urged the dropping of the subject. This exchange was unlike that with Madison in which independent views were espoused, and the impact of their ideas brought the two men closer together helping them to define their positions more clearly.

Jefferson continued to discuss the Constitution with Colonel William Stephens Smith, Adams' son-in-law. In no way, however, can this series of letters on the Constitution replace that which would have resulted with Adams. Colonel Smith held opinions which were not necessarily those of his father-in-law. Nonetheless, it can be intimated that Adams learned the content of Smith's correspondence with Jefferson; and possibly some of Smith's thoughts may have originated with, or at least been influenced by, Adams.

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Carrington to Jefferson, May 14, 1788, Boyd, Papers, XIII, 157. Carrington's and Madison's letters implement each other. Carrington would write when Madison was unable to do so, or one would omit information because the other would be reporting on the event or circumstance from first-hand observations in a subsequent letter. On this occasion, Carrington acted without Madison's knowledge and possibly surprised him when he asked him to send along the second volume to Jefferson.

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Madison to Jefferson, August 11, 1788, Ibid., XIII, 498-99.

The youngest person of this group was James Monroe. One would think that because of his age he would have been influenced by Jefferson. This was not the case, considering Monroe's stand at the ratifying convention of Virginia in July, 1788. He sided with the Patrick Henry and George Mason faction which was opposed to the Constitution. There was little discussion, and Jefferson mainly clarified his position with Monroe.

Jefferson's correspondence with Washington was quite formal. He admired and respected Washington because of his wisdom, integrity, and capacity for leadership. He guarded the statement of his views in his letters to the older man. Since he was aware of the conservative politics of the general, he did not want to upset him.

From his Parisian post, Jefferson expressed a deep concern for affairs in Virginia. He had devoted much time to the codification of Virginia's legal structure and had fought to introduce measures which would have liberalized and democratized his state. He did not want to see her either led out of the union by unscrupulous politicians such as Patrick Henry or completely lose her peculiar identity in a thorough-going unionization.<sup>5</sup> In another sense, being loyal to the union, he encouraged Virginia's ratification of the Constitution of 1787. While corresponding with Adams, Madison, Monroe, and Washington, Jefferson also wrote to lesser figures such as Edward Carrington, General Greene's quartermaster of the southern campaign; Uriah Forrest, a member of the ratifying convention; and Alexander Donald, the Richmond tobacco merchant who allowed Patrick Henry the

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Jefferson to Thomas Lee Shippen, July 13, 1788, Boyd, Papers, XIII, 359.



use of one of Jefferson's letters. Jefferson established his position on the Constitution for the benefit of these Virginians.

From the introduction of the Constitution until the new government had been inaugurated, Jefferson seemed more interested in getting the new order established rather than carrying on lengthy theoretical discussions. As a practical politician, he considered the immediate situation to be of greater importance than the abstractions of the law. In the light of this, the correspondence with non-Virginians such as Benjamin Franklin, Francis Hopkinson, David Humphreys, Dr. Richard Price, St. John de Crevecoeur, and the Comte de Moustier was mainly discussion of the immediate issues or of the process and progress of ratification. He communicated with these people either to answer specific questions, to clear up misconceptions, or to elucidate his views on the Constitution of 1787.

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In early November, Jefferson received his first copy of the Constitution. It came from William Stephens Smith. Adams had received copies from the dissenting member of the Massachusetts delegation of the Constitutional Convention, Elbridge Gerry.<sup>7</sup> Since Adams knew that Jefferson could not possibly have received a copy, he had Smith enclose one in his letter to Jefferson. Other copies soon followed from Washington, Franklin, Francis Hopkinson, and others.

Jefferson did not react favorably to the Constitution when he first saw it. It would take some time for him to come to terms with

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Madison to Jefferson, July 24, 1788, Boyd, Papers, XIII, 412.

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Adams to Jefferson, November 10, 1787, Ibid., XII, 335.

it. By May, 1788, he was well on the way toward accepting it. In writing to Carrington, he stated that at first he disliked parts of it even though he did see much good in it. "Reflection and discussion have cleared off most of these." He admitted that it became more and more acceptable to him as it gained favor with the people.<sup>8</sup> This movement, from almost complete rejection to almost complete acceptance, was evident in his correspondence.

After a hurried perusal of the new instrument of government, Jefferson dashed off a letter to Adams. He asked Adams how he liked the new Constitution. Jefferson himself admitted being staggered by it. The Americans had changed since he had left the country. He could not envision how they could conceive of an executive department which, to him, at the moment, was the main stumbling-block. He was not ready for such a change. He was still loyal to the Articles of Confederation. Endowing the Articles with the sanctity of a holy ikon, he considered that three or four new amendments to the Articles would have been the better choice than a complete new constitution.<sup>9</sup>

One month after writing to Adams, Jefferson wrote to his counterpart in Madrid, William Carmichael. He mentioned the fact that the newspapers in America were not reacting favorably to the Constitution. They were objecting to the nature of the general government which would operate on the people without the counterbalance of a bill of rights on its power. In addition, they could not accept the nature of the executive department.<sup>10</sup> Possibly Jefferson read only the

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Jefferson to Carrington, May 27, 1788, Boyd, Papers, XIII, 208.

9

Jefferson to Adams, November 13, 1787, Ibid., XII, 350-51.

10

Jefferson to William Carmichael, December 15, 1787, Ibid., XII, 425.

newspapers that at the moment agreed with his objections.

Five days later, Jefferson corresponded with Madison. For the first time, he spoke of accepting the Constitution. He either had come to terms with it or all of a sudden realized its good features. He reasoned that if the majority of the people ratified it, he would cheerfully concur with them.<sup>11</sup> This act of the people to Jefferson meant that they saw what was good in the Constitution. He was confident that the people knew what was right and good. His only reservation was that he hoped that the Constitution would be amended whenever it did not operate effectively.

On the following day, December 21, 1787, Jefferson expressed his position differently to Carrington. He considered himself "nearly a Neutral."<sup>12</sup> The objections had become "a bitter pill, or two." By the beginning of February of the following year Jefferson wanted to see the Constitution become the law of the land. He still maintained his reservations about it. Foremost of these objections by this time had become the lack of a declaration of rights. Jefferson labeled the absence of this as glaring. In spite of it, he desired that the Constitution be ratified because of the good it contained.<sup>13</sup> In addition, he was happy that the current of opinion was turning in favor of the Constitution; and he was certain that it would be accepted by the people.

On that same day, February 2, 1788, Jefferson also wrote to

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- <sup>11</sup> Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 442.  
<sup>12</sup> Jefferson to Carrington, December 21, 1787, Ibid., XII, 446.  
<sup>13</sup> Jefferson to John Rutledge, Jr., February 2, 1788, Ibid., XII, 557.

William Stephens Smith. He reiterated, in substance, what he had written to John Rutledge, Jr. but included an additional thought. If he were in America, Jefferson stated, he would urge the acceptance of the Constitution until nine states had ratified it. Then he would urge the remaining four to withhold ratification until a declaration of rights

<sup>14</sup>  
would be added. When he wrote to Madison on the sixth of February, he completed his nine-four formula. He added that this means of ratification would act as a means of completing the instrument, its good features would not be lost, and "it's [sic] principal defects" cured. He also expressed his joy that the Constitution was being

<sup>15</sup>  
"received with favor." On the following day, Jefferson sent a  
<sup>16</sup>  
a letter to Alexander Donald, his Richmond merchant. He outlined his formula for ratification. It was this letter which Patrick Henry used to try to have the Virginia Convention rescind its action of ratification.

Jefferson wrote few letters during March and April of 1788. He was away from Paris. For the most of March he was in Amsterdam with John Adams arranging for a new loan for the United States. On March 30, he began his trip up the Rhine and did not return to Paris until April 23.

On May 2, he sent to General Washington a letter which was long over-due. Washington had previously corresponded with Jefferson on the

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Jefferson to William S. Smith, February 2, 1788, Boyd, Papers, XII, 558.

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Jefferson to Madison, February 6, 1788, Ibid., XII, 569-70.

16

Jefferson to Alexander Donald, February 7, 1788, Ibid., XII, 571.

matter of finding European capital to finance an internal waterway system in the United States. Jefferson had not been successful in encouraging anyone to venture into the project. However, he took the opportunity to report to Washington on the European situation which at the moment seemed like a seething caldron ready to surge up into a full-scale European war. At the end of the letter, he expressed his opinion on the Constitution. He held only two objections to the new instrument of government. On the positive side, he maintained that there was "a great deal of good in it" according to his ideas. He also stated that he had come "to look forward to the general adoption  
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... with anxiety." Jefferson had, by this time, abandoned his nine-four formula for ratification because the present condition of the United States as he understood it, demanded immediate adoption of the Constitution.

The explanation for the abandonment of this principle can be explained by the portion of this letter in which he reported on his meetings with the Dutch bankers. The stay in Holland was very sobering for Jefferson. In the process of negotiating a new loan just to pay the interest on the American debt held by the Dutch, Jefferson became even more aware of the intricacies involved in determining the degrees of credit which were assigned to a government. England, he learned, was at the top of the list because she levied taxes to take care of the interest. The United States was at the bottom. The United States, however, had been given the highest rating for the repayment of the principal. Still she had to be given the lowest degree for the paying of interest because the Confederation had no means

at its disposal for the levying of special taxes.

The Dutch bankers who were about to consider the Confederation bankrupt, were looking forward to the prospect of a new government for the United States "with a great degree of partiality and even anxiety."<sup>18</sup> Thus Jefferson became anxious for the adoption of the Constitution. The Constitution would be the means of getting a high credit standing. Jefferson desired that the United States have the highest credit rating because it would be another means of buttressing national independence. In his opinion, a weaker nation with better credit than the United States could by aggression made possible by its ability to<sup>19</sup> get the necessary funds, end American independence.

Jefferson had on prior occasions made more of his objections to the Constitution than his reason for its adoption. When he spoke of the good in the plan of government, he did not specify it. In writing to the Comte de Moustier on May 17, 1788, he became a trifle more specific. He stated that the new Constitution would consolidate the government, provide for a just representation, make possible "an administration of some permanence," and give other valuable features which he did not enumerate. Jefferson had come along the way of accepting the Constitution slowly and surely. He stated to Moustier that "we must be contented to travel on towards perfection, step by

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On May 22, 1788, the bankers, Nicholas and Jacob Van Staphorst sent Jefferson a letter in which they affirmed their stand. They wanted Jefferson to keep them informed of any progress toward adoption of the new Constitution. In addition, they themselves counted on the "actual threatening Situation of European politics" which would act as a means of getting the reluctant states to accede to the Constitution. Nicholas and Jacob Van Staphorst to Jefferson, May 22, 1788, Boyd, Papers, XIII, 186.

19

Jefferson to Washington, May 2, 1788, Ibid., XIII, 126-28.



step." A perfect government could not be ordered into being immediately,<sup>20</sup>  
Jefferson wrote, but fashioned out of the necessity of the situation.

Later that same month, Jefferson wrote to Carrington that it was  
by "reflection and discussion" that he had overcome most of his<sup>21</sup>  
objections to the Constitution. Jefferson explained to William  
Carmichael his changing reaction to the Constitution. He was pleased  
with many of its parts when he had first seen it, but he "thought that<sup>22</sup>  
he saw in it many faults, great and small." Reading and reflection  
were instrumental in overcoming several of his objections which he had  
formed at first. He held to only two major objections and overlooked  
or ignored the remaining ones. In this letter, Jefferson again  
demonstrated complete abandonment of his nine-four formula. Now he  
considered the Massachusetts plan for ratification the best procedure-<sup>23</sup>  
ratify now and press for amendments later.

Jefferson was becoming anxious to hear that nine states had  
accepted so that the new government could be launched. During July,  
Jefferson was hopefully awaiting the packet from the United States with  
the news of the ratification of the new Constitution. Specifically, he  
wanted to hear of Virginia's and South Carolina's accessions. The  
Massachusetts method of ratification had become "the glorious example."  
The ease of obtaining amendments under the new Constitution would be a  
means of reconciling all factions in the country. Jefferson, in

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Jefferson to Le Comte de Moustier, May 17, 1788, Boyd, Papers, XIII, 174.

21

Jefferson to Carrington, May 27, 1788, Ibid., XIII, 208.

22

Jefferson to Carmichael, June 3, 1788, Ibid., XIII, 232.

23

Jefferson to Carmichael, June 3, 1788, Ibid., XIII, 232.

writing to John Brown Cutting, expressed practically the same idea as he had to William Carmichael. The Constitution itself was an easier means of bringing about the necessary changes in the government than the Confederation which necessitated unanimity on every reform.

24

On July 31, 1788, Jefferson wrote to Madison. He expressed his sincere joy that the Constitution had been accepted by the people. He had heard that Virginia had ratified it and thought that it was the ninth states. Actually New Hampshire, meeting at the same time as Virginia, had become the ninth state to ratify.

By this time, Jefferson had come to consider the Constitution as though it were a work of art. He said that it was "a good Canvas [sic], on which some strokes only want retouching."

25

The success of ratification, although sincerely wished by Jefferson, still bewildered him. He mentioned this when he wrote to Dr. Richard Price, the English clergyman and philosopher. He did not believe that a form of government which would consolidate the thirteen states as much as the Constitution would, could possibly succeed. He accounted for this acceptance by the change in the climate of opinion which had occurred since he had been absent from the country. He called this shift "a change in their [the people's] dispositions."

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Jefferson made the crowning and final statement that he could

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Jefferson to Carmichael, June 3, 1788, Boyd, Papers, XIII, 232, and Jefferson to John Brown Cutting, July 8, 1788, Ibid., XIII, 315.

25

Jefferson to Madison, July 31, 1788, Ibid., XIII, 442.

26

Jefferson to Dr. Richard Price, January 8, 1789, Ibid., XIV, 420. Concluding the letter to David Humphreys, Jefferson spoke of only knowing "the Americans of the year 1784." Jefferson to Humphreys, March 18, 1789, Ibid., XIV, 679.

make about the Constitution of 1787 in his letter to David Humphreys. The government had been inaugurated on March 4, 1789. He wrote to Humphreys on March 18. He stated that "the Constitution . . . was<sup>27</sup> unquestionably the wisest ever yet presented to men."

The Constitution was the result, Jefferson stated to Humphreys, of the deliberations and of the good sense of the people" intervening into the affairs of state and bringing order after things had gone wrong. Jefferson, by ascribing the Constitution to the good sense of the people, considered it a proof of the ability of the people to govern themselves. Also thinking of the people interposing their corrective measures into public affairs to bring order out of the confusion that entered into government brought Jefferson finally to admit that the<sup>28</sup> Confederation could not straightn out its own affairs.

Jefferson admired and valued the example which the United States gave to the world. When there was the need for reform, the people assembled the wisest men and allowed them to deliberate and recommend<sup>29</sup> reforms. There was not a bloody revolt or a civil war or even a Reign of Terror but instead a convention- a Constitutional Convention.

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<sup>27</sup> Jefferson to Humphreys, March 18, 1789, Boyd, Papers, XIV, 679.

<sup>28</sup> Jefferson to Francis Hopkinson, December 21, 1788, Ibid., 370 and also Jefferson to Thomas Lee Shippen, June 19, 1788, Ibid., XIII, 277.

<sup>29</sup> Jefferson to Humphreys, March 18, 1789, Ibid., XIV, 678.

#### IV. JEFFERSON AND THE TRIPARTITE FORM OF GOVERNMENT OF THE CONSTITUTION

The problem of the nature of the central government drew the interest of different groups during the period of the Confederation. In fact, it produced two factions which for all practical purposes<sup>1</sup> took on the semblance of political parties. These groups were the "nationalists" and the "federalists." The nationalists emphasized the importance of the central government and its prerogatives, and the federalists sought to retain the supremacy of the state government at the expense of the federal government. Jefferson did not, he admitted,<sup>2</sup> consider himself to be of either faction. He saw each side in its perspective and gravitated from one to the other depending on the<sup>3</sup> issue. He did not feel that onesidedness could serve the best interests of the nation as a whole.

Jefferson wanted to see his political outlook become the guiding principle for the revision of the government. This idea would bring into being a central government which would give foreign nations the assurance that it could carry out its side of any agreement. The states<sup>4</sup> still retain complete sovereignty in their internal affairs.

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Jensen, New Nation, 43-46, 344-45, and 399-400.

2

Jefferson to Hopkinson, December 1, 1788, Boyd, Papers, XIV, 324.

3

Patterson, Constitutional Principles, 32-34.

4

Jefferson to Madison, February 8, 1787, Boyd, Papers, IX, 264-67 and Jefferson to George Wythe, September 16, 1787, Ibid., XII, 127.

Jefferson had come to consider the Confederation as the manager  
of the union's foreign affairs and not the final authority for internal  
5 matters. In this respect, the Confederation could deal in the  
administration of internal affairs only after it had been given the  
power to do so by the unanimous consent of the states or by the provisions  
of a treaty. Jefferson equated a treaty with an amendment to the  
Articles. He considered a treaty as having the force of supreme law.<sup>6</sup>  
Thus the granting to Congress the jurisdiction over commerce and the  
means for an independent income would not destroy the democratic nature  
of the Articles but would give it a greater effectiveness.

Jefferson did not understnad or see the need for giving the  
central government more powers than were necessary for its main work-  
7 foreign affairs. When he finally heard of the possibility of the  
formation of a new instrument of government to supercede the Articles  
of Confederation, he became preoccupied with the nature of the govern-  
ment that would result from the new Constitution.

Jefferson had studied the political tracts of his era and was well  
acquainted with Montesquieu, who was the proponent of the separation of  
the powers of government. The framers of the Articles of Confederation  
made Congress both the executive and the legislative branches of the  
government. Although Jefferson subscribed to a tripartite form of  
government in his "Draft Constitution of 1783," he did not, in practice,  
8 provide for the complete separation of the branches. He made the

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5 Patterson, Constitutional Principles, 77.

6 Ibid., 76-77.

7 Ibid., 33.

8 "Draft of a Constitution for Virginia," Padover, Complete Jefferson,  
111.

executive branch dependent on and under the direction of the legislative  
branch.<sup>9</sup> Actually, the executive, surrounded by the Council of State,  
which was appointed by the legislature to advise him, had all powers  
of that office delegated to him. Thus having his position so defined as  
the executor of the laws of the state, precluded any opportunity to act  
independently of the legislature.

The experience under the British crown had made a deep impression  
on Jefferson which explained his reluctance to put into his constitution  
provisions for a truly independent executive branch. To be absolutely  
clear of his intention to exclude the implication of powers of office  
beyond those specified, he stated that "by executive powers, we mean  
no reference to those powers exercised under our former government by  
the crown as its prerogative."<sup>10</sup> Jefferson shared with his contempo-  
raries during the period of the Confederation the distrust of  
unrestricted executive powers.<sup>11</sup>

The question of the character of the executive was more of an  
issue with Jefferson than it was with the Constitutional Convention.  
From his point of view, he would not have readily assented to a single  
executive but rather would have sided with those few in the Convention  
who wanted an executive committee such as that provided for in the  
Virginia Plan.<sup>12</sup> Considering the executive committee to be superior  
to a single individual, he held that should the Convention fail to

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<sup>9</sup> Padover, Complete Jefferson, 114-16.

<sup>10</sup> Ibid., 114.

<sup>11</sup> Jensen, New Nation, 360-61, and Farrand, Constitution, 77.

<sup>12</sup> Ibid., 77.



extend its reforms to include the separation of the powers of government within the Confederation and provide for an executive head, then Congress should take it upon itself to commission an executive committee. This committee would function while Congress was in session and handle the executive trivia in order to free Congress to do its legislative

<sup>13</sup> tasks. In this matter, Jefferson was not trying to urge the acceptance of a theoretical position, which he accepted as reasonable, as much as he was convinced that the separation of powers of government promoted greater efficiency in the handling of governmental business.

When Jefferson finally did have the opportunity to evaluate the result of the Constitutional Convention, he took exception with the character of the executive. He called it "a bad edition of a Polish

<sup>14</sup> king." The fact that the president could be re-elected term after term with no restriction on the number of terms gave Jefferson the impression that within a few generations, the United States would have an executive who was elected for life. With no constitutional barrier to this possible development, in time it would even be difficult to turn the incumbent out of office. With the military at his disposal, it would be impossible. Jefferson also feared foreign intervention. Already suspicious of the British whom he considered to be dedicated to the destruction of the American republic, the situation of an elected executive who could have his terms extended for life would invite all the pernicious elements of dissension and corruption such as entered

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Jefferson to Carrington, August 4, 1787, Boyd, Papers, XI, 679.

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Jefferson to Adams, November 13, 1787, Ibid., XII, 351.

into Polish and, in part, Dutch politics.

Jefferson stated in his letter of November 13, 1787 to William S. Smith that after some thought he equated the president with the Stadtholder of Holland. A civil war had been brewing in Holland which almost precipitated a general European war. The stadtholder had been driven out by the Patriotic Party and had been reinstated in his hereditary office by the intervention of Prussia. Jefferson used this contemporary example to illustrate the disadvantages of a life tenure which would make that office unconscious of the needs of the people and would make use of foreign intervention to maintain itself in power against the wishes of the people.

Jefferson did not favor the system of multiple terms of office. In his "Draft Constitution of 1783," he gave the executive officer a term of five years with a specific restriction on a second term. He would have wanted also the Constitution of 1787 to have provided for a council "to aid or check" the executive and to have made him ineligible for a second term. On the other hand, the Constitutional Convention

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Jefferson to William S. Smith, November 13, 1787, Boyd, Papers, XII, 356. Jefferson was acquainted with Polish politics. See Jefferson to Madame de Corny, October 18, 1787, Ibid., XII, 247. The topic of Poland was of current discussion. The first partition of Poland had taken place in 1772, and there was the struggle for constitutional reforms going on in Poland to remove the elements of the constitution which could make possible another national humiliation. Robert Nisbet Bain, Roman Dyboski, and anonymous, "Poland," Encyclopaedia Britannica, 14th ed.; XVIII, p. 140.

16

Jefferson to William S. Smith, November 13, 1787, Boyd, Papers, XII, 356.

17

"Draft of a Constitution for Virginia," Padover, Complete Jefferson, 114.

18

Jefferson to Adams, November 13, 1787, Boyd, Papers, XII, 351.

had decided in favor of a truly independent executive who would not  
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have been the creature of or dependent on the legislature. If he  
would have been elected by the legislature, then the Convention would  
have thought it reasonable to make him ineligible because of the  
possibility of corruption which would have entered into the legislature  
in the striving for that office. The Convention thought positively in  
terms of re-election to act as an incentive to the faithful discharge  
20  
of the duties of the office.

Jefferson, on the other hand, was suspicious of the motives of men  
21  
and unchecked executive power. His awareness of the elected office  
in Poland and its history gave him sufficient reason for opposing the  
bringing a similar situation into being in the United States. This  
aspect of the elected office, according to Farrand, did not even enter  
22  
into the deliberations of the Convention.

Another matter involved in the character of the executive as  
outlined in the Constitution of 1787 that bothered Jefferson was  
elections. He did not want to deprive the people of their right to  
choose the officers of their government. On the contrary, he feared  
that the people would be carried away by their passions and would not  
23  
use their reason. John Adams agreed with Jefferson that elections  
were dangerous. Because of the ambitions of officer seekers,

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19 Farrand, Constitution, 78-79.

20 Ibid., 77.

21 "Draft of a Constitution for Virginia," Padover, Complete Jefferson,  
114.

22 Farrand, Constitution, 171

23 "Autobiography," Koch and Peden, Writings, 82.

elections terrified Adams. Thus he maintained that they should be  
24 dreaded. William S. Smith took exception with both his father-in-law and Jefferson. His view was that such elections would be orderly affairs carried on in different polling places and by secret ballot. 25 They would be very unlike Polish elections. The Poles elected their kings by gathering on the plain outside of Warsaw and ballotted by shouting.

Nonetheless Jefferson's foremost fear was the implication of no restrictions on the number of terms one individual could have as  
26 president. This historical pattern for the executive office when dependent on elections demonstrated that they were subject to external pressures. Jefferson still considered that elections in themselves were dangerous. For these reasons, he urged that the rotation principle be incorporated into the Constitution in order to make elections  
27 "uninteresting."

As he thought about elections and the executive office, he became convinced that the United States would eventually have a monarchical government. The first step in this evolution would be a life incumbency and then an hereditary office. Considering that Jefferson wrote this to Washington warranted that he (Jefferson) in all  
28 seriousness saw the progression from ballot to crown. During the  
29 Convention, Franklin also intimated the same thought.

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24 Adams to Jefferson, December 6, 1787, Boyd, Papers, XII, 396.

25 William S. Smith to Jefferson, December 3, 1787, Ibid., XII, 391.

26 Jefferson to William S. Smith, February 2, 1788, Ibid., XII, 558.

27 Jefferson to Madison, December 20, 1787, Ibid., XII, 440-41.

28 Jefferson to Washington, May 2, 1788, Ibid., XIII, 128.

29 Patterson, Constitutional Principles, 81.

Jefferson hoped that there would be an awareness of the danger of unrestricted number of terms in the office of the president and need<sup>30</sup> to change this feature of the Constitution by amendment. He, however, wanted this amendment to be affixed only after Washington's stay in office had ended. By the middle of 1788, it was obvious that Washington was the choice for the office. The forthrightness and<sup>31</sup> integrity of the general made such an amendment unnecessary. But Jefferson realized that Washington would be succeeded by "inferior<sup>32</sup> characters" and then the limitations would be necessary.

While Jefferson was apprehensive about this matter of the executive, he found that no one, at least to his knowledge, agreed<sup>33</sup> with him and shared his fears. Although Jefferson considered himself alone, there were those in the Convention who thought as he. There had to be limitations. The impeachment and the qualified veto were not considered sufficient. Those in the Constitutional Convention who shared Jefferson's fears thought that the best limitations were "a<sup>34</sup> suitable term of office" and the method of election. Nonetheless, he admitted to Madison that possibly he was wrong and his fears were

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<sup>30</sup> Jefferson to Washington, May 2, 1788, Boyd, Papers, XIII, 128.

<sup>31</sup> Farrand, Constitution, 163, and Jefferson to Francis Hopkinson, March 13, 1789, Boyd, Papers, XIV, 651.

<sup>32</sup> Jefferson to Carrington, May 27, 1788, Ibid., XIII, 209.

<sup>33</sup> Jefferson rejoiced. Finally, he realized that there were three states which agreed with him. They wanted to amend the Constitution so that the president would have been ineligible for re-election. Jefferson to Madison, November 18, 1788, Ibid., XIII, 188.

<sup>34</sup> Farrand, Constitution, 161.

35 mistaken. Thus he resigned himself to the will of the majority, but  
36 he did not consider that his stand was without foundation. If  
experience proved that he was right, he hoped that the future  
generations of Americans would move to correct the situation before  
37 the republic would be destroyed.

Taking up another aspect of the executive, Jefferson opposed  
giving the executive the power of veto on the acts of the legislature.  
The Constitutional Convention had given the veto of the executive due  
consideration. Time and time again, the motion was made to have the  
38 judiciary associated with the executive in the exercise of it. It  
was defeated each time because the judiciary, it was contended, would  
have the power to declare null and void any laws that were inconsistent  
39 with the Constitution. Jefferson's opinion reflected that small  
group in the Convention which wanted to associate the judiciary with  
40 the executive in the veto of legislative acts. His alternative  
desire would have been to give the judiciary the similar power of  
veto and to exercise it independently of the executive.

Jefferson omitted any word about the nature of the powers of the  
president other than the veto. The Constitutional Convention had

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Jefferson to Madison, July 31, 1788, Boyd, Papers, XIII, 443, and  
Jefferson to William S. Smith, February 2, 1788, Ibid., XII, 558.

36

Jefferson to David Humphreys, March 18, 1789, Ibid., XIV, 678-79.

37

Jefferson to Francis Hopkinson, December 21, 1788, Ibid., XIV, 370,  
and Jefferson to Humphreys, March 18, 1789, Ibid., XIV, 678-79.

38

Farrand, Constitution, 70, 119-20, and 156-57.

39

Ibid., 157.

40

Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 440.



created a new type of executive with powers which approached  
monarchical proportions.<sup>41</sup> This new figure was so unlike the executive  
which Jefferson proposed in his 1783 Constitution that his silence is  
almost inexplicable. The nature of the executive as delineated in the  
Constitution of 1787 being purely of an executive nature and without the  
judicial and legislative qualities of the British crown was then  
entirely satisfactory to him. Yet he had not been prepared for such a  
new creation. The executive branch in the Constitution of 1787 was  
novel to the American scene.<sup>42</sup> Jefferson did not anticipate such a  
figure to be evolved considering his 1783 Constitution. In addition,  
the makeup of the executive as provided for under the state  
constitutions which had been enacted during the decade from 1776 to  
1786 did not foreshadow the Constitution of 1787. These constitutions,  
just as Jefferson's, made clear the exclusion of implied powers and  
prerogatives. Executive power could not be exercised without the aid  
and consent of a council or the legislature.<sup>43</sup> Therefore, Jefferson's  
silence on these aspects of the executive can only be considered  
puzzling.

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Farrand, Constitution, 162.

42

Ibid., 162, and Patterson, Constitutional Principles, 90-91.

43

Ibid., 83-87.

The Constitutional Convention had to solve the problem of representation of both the people and the states in the legislature of the central government. Two plans, the Virginia and the New Jersey, were placed before the Convention. Out of the deliberations based on these attempts at the solution came the "Great Compromise." The issue of the large states versus the small states had to be worked out. The aforementioned plans respectively tended to maintain the interests of the group of states which proposed them. The large states were eager<sup>44</sup> to preserve their advantage of size. The smaller states feared the larger states mainly because their greater population would give them a decided advantage in any assembly based on proportional representation.<sup>45</sup> The Convention arrived at a compromise out of which Congress evolved as the branch of government where both the people and the states were represented. A bicameral legislature was formed composed of a Senate as the upper house, and the House of Representatives as the lower house. The Senate represented the interests of the states, and the House of Representatives was based on proportional representation of the population. The compromise of the distribution of representation<sup>46</sup> between the House and the Senate "captivated" Jefferson.

Jefferson welcomed the making of Congress solely a legislative body. Under the Articles of Confederation, Congress was both legislative and executive. In Jefferson's opinion, too much of its time had been spent in needless deliberation on the minute details of

44

Farrand, Constitution, 112-13, 118-19, and 166. Also Madison to Jefferson, October 24, 1787, Boyd, Papers, XII, 279.

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Farrand, Constitution, 97, 101, 107.

46

Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 439-40.

an executive nature. He considered it "embarrassing" and troublesome.

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For practical considerations, this reformation was necessary.

Having assented to the need for reform, Jefferson did not feel

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that there should be an carried out which was not necessary.

Jefferson's political philosophy did not permit government or any

function of government to have any more power than was necessary for the

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performance of its duty. The Confederacy needed reforming, and

Jefferson thought in terms of tailor-made reforms.

One issue which Jefferson considered beyond the realm of the

necessary was giving Congress the legislative supremacy over the

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states. This increase of the power of Congress fulfilled no purpose

other than to deprive other agencies such as the federal courts from

effectively providing a more equitable restraint on the state

legislatures. Jefferson wanted to have the hand of the Confederacy

strengthened but not at the expense of individual or state liberties.

He did not want, just because of the necessity of the moment, these

reforms to carry with them the seeds of the future destruction of

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American republicanism.

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Jefferson to Carrington, August 4, 1787, Boyd, Papers, XI, 678-79,  
and Jefferson to Madison, June 20, 1787, Ibid., XI, 480.

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Jefferson to George Washington, August 14, 1787, Ibid., XII, 36.

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Patterson, Constitutional Principles, 106-08. See also Jefferson  
to Madison, June 20, 1787, Boyd, Papers, XI, 481.

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Jefferson to Madison, June 20, 1787, Ibid., XI, 480-81.

51

Adrienne Koch, Jefferson and Madison: The Great Collaboration,  
(New York: Alfred A. Knopf, 1950), 35.

Nonetheless, the consensus of opinion in the Constitutional Convention moved that the central government had to have a means to<sup>52</sup> check state legislation. The past experience of the inability of the Confederation to enforce its demands upon the states was the motivating factor in making the federal constitution superior to the state constitutions. It naturally followed that part of this legal structure would have to include the negative on the state legislatures.

Madison gave Jefferson a detailed explanation for the decision of the Convention to provide for the power of the central government over the states. He reviewed for Jefferson the different propositions that were presented to the Convention for the shaping of federal authority. Deeply involved in this question was the ultimate nature of the individual states. Even before the Declaration of Independence, there<sup>53</sup>

had been the debates concerning the states. Should there be a central government with the states either subordinate to it or should the states be abolished? The Confederation was evidence of the latter choice, but the argument raged on through the decade and into the<sup>54</sup> Constitutional Convention.

In order to preserve the states in their prerogative but also to give the proper authority to the central government, there had to be a definition of what constituted the federal and the state jurisdictions. The central government of the Confederation had found it difficult to keep the states from encroaching on its

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Farrand, Constitution, 48, and Madison to Jefferson, October 24, 1787, Boyd, Papers, XII, 273.

53

Jensen, New Nation, viii-ix, 4, and 83.

54

Carrington to Jefferson, June 9, 1787, Boyd, Papers, XI, 409, and Jensen, New Nation, 25-26, 245-46, 256-57, 345, 407, and 420-21.

55 authority. The negative on the state, Madison maintained, was the  
56 means the federal government would have to preserve its authority.  
Jefferson agreed with Madison's reasoning in principle but not in  
practice. He hoped that there would be a way for the Confederation to  
57 enforce its "just authority."

Jefferson feared the negative and what could issue from it. He  
did not want to see the element of political coercion enter into  
American life. He did not oppose coercion. Legally, it was inherent  
58 in the nature of the contract. What Jefferson opposed was the  
granting of the power of coercion to the extent where there would be  
the propensity to exercise it freely. The Confederation, as Jefferson  
maintained, had the power but was slow to use it to enforce its  
decisions.

Tyranny in any form was bad. While Jefferson did not want to  
see in the executive the remaking of another tyrant such as the  
British crown, he became aware of another form of tyranny. The  
supreme power of government embodied in the legislature also could  
lead to a tyranny. Although he had feared the possible establishment  
of a monarchy, he considered that "the most formidable dread at  
59 present" was the tyranny of the legislature. The monarchical  
aspirations would die out, but the rising generations of citizens

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Madison to Jefferson, October 24, 1787, Boyd, Papers, XII, 274.

56

Madison to Jefferson, October 24, 1787, Ibid., XII, 273-75.

57

Jefferson to Washington, August 14, 1787, Ibid., XII, 36.

58

Jefferson to Carrington, August 4, 1787, Ibid., XI, 678-79.

59

Jefferson to Madison, March 15, 1789, Ibid., XIV, 661.

educated in republican ideals would bring about such a legislative tyranny.

Jefferson approved of the granting to Congress the power to tax and have an independent income. The Congress of the Confederation had not been chosen by the people and according to contemporary American thinking, could not have the power to tax. Since the lower house of the new Congress would be chosen directly by the people, Jefferson approved of its power to tax. Yet because the House was elected by the people, he did not think that this branch of the legislature was qualified to legislate for the Union in both federal and foreign matters.<sup>60</sup>

Jefferson had maintained the same opinion with Adams on a prior<sup>61</sup> occasion. In writing to Adams, he just stated that he did not feel that the House of Representatives was qualified to manage the affairs of the nation.

After writing to Madison, Jefferson possibly changed his mind about the federal power to tax. He had learned from Carrington that western lands were beginning to be sold. The proceeds from this sale had been earmarked to maintain the interest of the domestic and the foreign debt and could possibly even pay off the principal. Another source of income which the central government would have, would be the proceeds from the imposts and customs. With these two sources of income which would take care of the debt and the operating expenses of the federal government, Jefferson asked Carrington if it would not have<sup>62</sup> been wiser to have left the power of direct taxation to the states.

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Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 439-40.

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Jefferson to Adams, November 13, 1787, Ibid., XII, 351.

62

Jefferson to Carrington, December 21, 1787, Ibid., XII, 446.



Jefferson had stated to Madison that he approved of the power of taxation in the hands of the federal government. On the following day, he debated its wisdom.

Carrington replied to the inquiry which Jefferson posed. Behind Jefferson's questions was the thought that the federal government would have too much financial power, resulting from the monies from the sale of western lands, from the proceeds of the imposts, and from direct taxation. Carrington, in part, agreed with Jefferson that the first two sources would take care of the servicing of the debt and the operation of the government. On the other hand, he stipulated that while this total income would be adequate for peacetime, it would not be sufficient during wartime when the total resources of the country had to be at the disposal of the federal government. Carrington added that if the central government did not have the power of direct taxation under the Constitution, it still would have had then "some coercive principle" whereby it could requisition its needs to pursue the war. The most equitable and desirable method, Carrington<sup>63</sup> concluded, was the former constitutional means.

Carrington's answer convinced Jefferson of the wisdom to have given the central government the power of direct taxation. In writing to Washington on December 4, 1788, Jefferson stated that the safety of the state necessitated the federal government to have at its disposal<sup>64</sup> "all resources of taxation." Jefferson apparently had not

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Carrington to Jefferson, April 24, 1788, Boyd, Papers, XIII, 101-02.

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Jefferson to Washington, November 4, 1788, Ibid., XIV, 328. Jefferson had inadvertently misdated this letter. The following day, he sent off to Washington a note explaining his error. Jefferson to Washington, December 5, 1788, Ibid., XIV, 336.

thought very deeply about this power which was necessary to the federal government, and he expressed his gratitude to Carrington for his<sup>65</sup> explanation.

Jefferson hoped that the judicial branch would have been given a more prominent role in the government. He welcomed a permanent<sup>66</sup> organization of the judiciary which he considered necessary. In the government of the Confederation, the federal judiciary was appointed<sup>67</sup> when needed by Congress to hear cases within its jurisdiction. Under the Articles of Confederation, the jurisdiction of the judiciary included piracy, felonies committed on the high seas, determining appeals in cases of prizes taken on the high seas, and hearing cases involving disputes between states. Under the Confederation, there had been the development of a judiciary; but it was apparent to the Constitutional<sup>68</sup> Convention of the need for a permanently organized one.

The debate in the Convention concerning the judiciary, centered around the role of the judiciary in the exercise of the veto. The end result of this issue was that such a provision would have given this branch two opportunities to determine the constitutionality of legislation. The first would be the veto, and the second would be<sup>69</sup> judicial review after the law had been enacted. The power of veto was reserved for the executive branch. Jefferson would have wanted to

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Jefferson to Carrington, May 27, 1788, Boyd, Papers, XII, 208.

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Jefferson to Joseph Jones, August 14, 1787, Ibid., XII, 34.

67

Farrand, Constitution, 3-4, and "Articles of Confederation," Ibid., 217-18.

68

Ibid., 50.

69

Ibid., 156-57.

have the judiciary share the power of the veto either jointly with the  
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executive or separately.

Although he did not specifically state views concerning the  
judiciary other than those mentioned, Jefferson considered that the  
role of the judiciary should have been broader than as provided for in  
the Constitution of 1787. Besides the veto matter, he also would have  
wanted the judiciary's power increased. He saw this possibility with  
the addition of a declaration of rights. The judiciary then would have  
71  
the power of protecting the individual from the power of government.  
This would be possible, he surmised, if the judicial branch of the  
government would be independent of the other two. His past experience  
72  
precluded the possibility of this.

At this time, Jefferson wanted the judiciary to have greater  
powers than those provided for by the Constitution. Within a decade  
and a half, he would express the notion that the independence of a  
branch of government did not infer the progression to despotism and  
ignoring the equal independence of the other branches of the govern-  
73  
ment.

Jefferson reconciled himself with the division of the responsi-  
bilities of government. He was dismayed that the principle of rotation  
74  
of office in the executive and also the Senate had been abandoned.

70

Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 440.

71

Jefferson to Madison, March 15, 1789, Ibid., XIV, 659.

72

Patterson, Constitutional Principles, 118-19.

73

Ibid., 120-21.

74

Jefferson to Madison, July 31, 1788, Boyd, Papers, XIII, 443.

He accepted the legislature as it had been formed by the Constitution. Seeking to implement the powers of the judiciary, he did not foresee that this branch of the government would eventually bring him the most interference in the exercise of executive powers as he would interpret them when he would be the President of the United States.

V. JEFFERSON AND THE NATURE OF THE  
GOVERNMENT UNDER THE  
CONSTITUTION

Edward Carrington had speculated on the possible avenues of approach the Constitutional Convention would take toward reforming the structure of American government. These were either the dissolution of the states by an extreme form of centralization or a more moderate position keeping the states intact. The national government would be given the jurisdiction over trade, a means of procuring an independent income, and the former authority in foreign affairs.<sup>1</sup>

Jefferson did not understand, at first, the reasoning for an extensive reformation. He did not want a thorough-going centralization because of the ease with which it could be perverted to despotic rule. The experience under the British crown was still fresh in his mind. Jefferson had come to fear government which had at its disposal too much coercive power.

Although he was not surprised, he could not, at first, theoretically assent to the reasoning for the drastic revision which would give the federal government coercive powers such as the means to have an independent income and especially to nullify state laws. He intimated that these concessions came out of a lack of understanding

<sup>1</sup>

Carrington to Jefferson, June 9, 1787, Boyd, Papers, XI, 409-10.

2 of the nature of the Confederation. The Confederation was a contract and as such possessed a certain potential to coerce. As Jefferson explained, the Confederation had the power to force a recalcitrant state to accede to its demands, such as pay its obligations to Congress. It could do this simply by dispatching a frigate to a port of the particular state to exact payment by seizing its commerce. 3 It was only because of the mild disposition of Congress that this never occurred.

Jefferson considered that a government which had much power delegated to it would be disposed to use it. 4 Such a government, he classified as an energetic government. While he did not want the United States to have a government which had more coercive power than the Confederation, he did not disparage a certain amount of coercion. He gave it a place in government. Its purpose was to bring respect to the government and because of its nature to invoke in the people a desire that it never be used. 5

In actual practice, the power, either delegated or assumed by tradition, which a government had at its disposal, was not necessary. From his position in Europe, Jefferson compared the European situation with the American. He cited instances when the use of these same powers could not gain the desired ends for the government. 6 For example, during the three years he had been in France, there had been

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2 Jefferson to Carrington, August 4, 1787, Boyd, Papers, XI, 678.

3 Jefferson to Carrington, August 4, 1787, Ibid., XI, 678-79, and Jefferson to Monroe, August 11, 1786, Ibid., X, 225.

4 Jefferson to Carrington, May 27, 1788, Ibid., XIII, 209, and Jefferson to Hopkinson, May 8, 1788, Ibid., XIII, 145.

5 Jefferson to Monroe, August 11, 1786, Ibid., X, 225.

6 Jefferson to Madison, December 20, 1787, Ibid., XII, 442.



three insurrections. Jefferson also added to this that France had to maintain an army of two to three hundred thousand men at all times. According to Montesquieu, who considered Turkey to be the most despotic of all European nations, Jefferson stated, that there insurrections were almost a daily occurrence. In contrast, the Shays' Rebellion, the only public disturbance involving bloodshed in the eleven years of the Confederation and affecting only Massachusetts, was mild and almost insignificant.<sup>7</sup> He concluded that a government could not achieve the loyalty of its citizens or order by force of arms.

Although Jefferson opposed an energetic government, he wanted the United States to have a stable government which was not dependent on the states. The central government under the Articles of Confederation depended on the states. The stability of the government, as Jefferson understood it, meant that the national government would have the means of perpetuating itself without "leaning for support on the state legislatures."<sup>8</sup> He had summarized what he meant by a stable government to the Comte de Moustier, the French minister plenipotentiary to the United States. In Jefferson's opinion, the nation would benefit from the good features of the Constitution by the "consolidation of our government, a just representation, an administration of some permanence . . ."<sup>9</sup> A stable, though not energetic, government would have the power to act within its jurisdiction in behalf of the people with policies of a certain continuity.

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Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 442.

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Jefferson to Madison, December 20, 1787, Ibid., XII, 439, and Jefferson to Dr. Richard Price, January 8, 1789, Ibid., XIV, 420.

9

Jefferson to Moustier, May 17, 1788, Ibid., XIII, 174.

Jefferson's concept of a stable government did not preclude one that could not change. An essential facet of his political philosophy<sup>10</sup> was change.

A government could not presuppose a rigidity and an unresponsive attitude without adjusting itself to the changing conditions of the people. Moreover, there had to be a willingness of the government to move quickly and forthrightly to serve its people best. In this respect, government had to display flexibility.

Jefferson maintained that a good government had to be a stable government with constitutional means for bringing about necessary changes.

Since Jefferson was not hostile to change, his anxious anticipation of the Philadelphia Convention can be explained. He was sentimentally attached to the Articles of Confederation to such an extent he venerated that instrument of government. Still he considered it needed amending. After having read the Constitution of 1787 and discussing and reflecting on its structure and provisions, his estimation of its wisdom grew until he accepted it with only two reservations.

Jefferson did not promote change for the sake of change. The underlying motive had always to be that change was necessary for the democratization of the social and political order so that an individual's liberty to advance as a human being would not be restricted by tradition or outmoded legal strictures. For this reason,<sup>11</sup> he wrote the bill which would separate church and state in Virginia.

As a revolutionist, Jefferson was a cautious one, not seeking to make<sup>12</sup> wholesale reforms, but only to change that which needed alteration.

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<sup>10</sup>

Patterson, Constitutional Principles, viii.

<sup>11</sup>

Jensen, New Nation, 131-32.

<sup>12</sup>

Schachner, I, p. 241, and Jensen, New Nation, 138.

This philosophy was evident in Jefferson's justification of the Shays' Rebellion and explained his insistence for leniency for the insurgents. The British newspapers referred to this civil disturbance as an example of the "anarchy" reigning in the United States.<sup>13</sup> The rebellion and its allied threats propelled Washington out of retirement and caused him to take a more active role in national affairs. The Constitutional Convention, according to Jefferson, had been frightened by the occurrence of the rebellion. With the misunderstanding of the operation of the Articles of Confederation and the Rebellion, there were those who truly felt that the union was on the verge of disintegration and about to be thrown into a state of anarchy.<sup>14</sup>

On the other hand, Jefferson viewed the Rebellion as a sign of health. The people were not pathetically submissive to abuses, whether these were imagined or real. Instead, when they realized that the government was not attentive to their needs, they sought the only means at their disposal to correct the situation and make their leaders aware of the reason for change. In this light Jefferson viewed the Shays' Rebellion and could not condemn it. He stated that "God forbid we should ever be 20. years without such a rebellion."<sup>15</sup> The right of the people to rebel could not be denied them. The people were expressing their opinions.<sup>16</sup> Rather than castigating the hapless

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<sup>13</sup> Jefferson to William S. Smith, November 13, 1787, Boyd, Papers, XII, 356.

<sup>14</sup> David Humphreys to Jefferson, November 29, 1788, Ibid., XIV, 301.

<sup>15</sup> Jefferson to William S. Smith, November 13, 1787, Ibid., XII, 356.

<sup>16</sup> Jefferson to Carrington, January 16, 1787, Ibid., XI, 49.

insurgents for their ignorance, Jefferson applauded their actions as the "censors of their governors."

Jefferson conceded the possibility that the people involved in the rebellion acted out of ignorance. If they had been kept informed of the affairs of government, the rebellion would have never occurred. Moreover, he asserted that it was the duty of the government to keep the people aware of its affairs. Jefferson did not consider government as a being apart from the people and with an organic existence of its own. In fact, it was a school in which the people were to be educated and trained to become responsible and active citizens.<sup>17</sup>

While Jefferson considered that the Constitution showed evidence of having been greatly influenced by the Shays' Rebellion,<sup>18</sup> he also viewed it as the result of the people working to bring about a change in the nature of their national government. Romantically, Jefferson spoke of the Constitutional Convention as the fruition of the desire of the people to correct their own situation.<sup>19</sup> On many occasions he referred to the convention in this light. The condition of national tranquility under which the Convention worked gave Jefferson another reason for stating that the American people were superior to all others. He stated to Edward Rutledge that "we can surely boast of having set the world a beautiful example of a government reformed by

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Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 442, and "Enclosure," Jefferson to Uriah Forrest, December 31, 1787, Ibid., XII, 478.

18

Jefferson to William S. Smith, November 13, 1787, Ibid., XII, 357.

19

Jefferson to David Ramsay, August 4, 1787, Ibid., XI, 687;  
Jefferson to Ralph Izard, July 17, 1788, Ibid., XIII, 373;  
Jefferson to Dr. Richard Price, January 8, 1789, Ibid., XIV, 420;  
and Jefferson to Humphreys, March 18, 1789, Ibid., XIV, 678.

reason alone without bloodshed." <sup>20</sup> This circumstance of voluntary reform without civil disturbance impressed Jefferson for some time. He had voiced similar sentiments to C.W.F. Dumas, the agent for the United States at The Hague. <sup>21</sup> The possibility of such a movement for change taking place in almost idealistic fashion affected Jefferson.

During the period between the first reading of the Constitution and the inauguration of the new government, Jefferson rarely mentioned the mechanism for the amending of the Constitution as one of the good features. Yet it can be inferred that he included it in what he considered as the "good" in the Constitution. He was intensively aware of it and surmised that it would be used often. In fact, he hoped that it would be used often. <sup>22</sup>

He spoke of an amendment to make the re-eligibility of the executive unconstitutional and to introduce the concept of the rotation of offices. Its use in this respect would serve as a means to preserve the republic and prevent its corruption. <sup>23</sup> The connotation of the amendment process was an extremely democratic feature for Jefferson. <sup>24</sup> As the Constitutional Convention became to Jefferson a symbol of democratic action, the same spirit had to be carried into the

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<sup>20</sup> Jefferson to Edward Rutledge, July 18, 1788, Boyd, Papers, XIII, 378.

<sup>21</sup> Jefferson to C.W.F. Dumas, September 10, 1787, Ibid., XII, 113. See also Jefferson to Ralph Izard, July 17, 1788, Ibid., XIII, 373.

<sup>22</sup> Jefferson to John Rutledge, Jr., February 2, 1788, Ibid., XII, 557 and Jefferson to Moustier, May 17, 1788, Ibid., XIII, 174.

<sup>23</sup> Jefferson to Alexander Donald, February 7, 1788, Ibid., XII, 571.

<sup>24</sup> Jefferson to Alexander Donald, February 7, 1788, Ibid., XII, 571.

Constitution. The element of change, not for the sake of change, would bring about adjustment of the government in the striving toward

25 perfection. Jefferson's faith in the eventual fruition of the perfect government was a secure one. It would be a matter of time and 26 the exercise of the "good sense and free spirit" of the people.

The element of change in Jefferson's political philosophy was in evidence as he critically viewed the Constitution of 1787. It presented points which Jefferson could not accept. It can be surmised that unless there was a means to amend the Constitution more easily than the Articles of Confederation, he would have not acquiesced to those features which 27 he considered minor objections.

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Jefferson to Moustier, May 17, 1788, Boyd, Papers, XIII, 174, and Jefferson to Madison, December 20, 1787, Ibid., XII, 442.

26

Jefferson to William S. Smith, February 2, 1788, Ibid., XII, 558; Jefferson to Washington, May 3, 1788, Ibid., XIII, 128; and Jefferson to C.W.F. Dumas, February 12, 1788, Ibid., XII, 584. Also see Jefferson to Edward Rutledge, July 18, 1788, Ibid., XIII, 378.

27

Jefferson to John Brown Cutting, July 8, 1788, Ibid., XIII, 315.



## VI. JEFFERSON AND THE BILL OF RIGHTS

On March 4, 1789, the new government of the United States was inaugurated. Jefferson's remaining objections to the Constitution were major ones. There was no provision for the rotation of offices of the executive and the Senate after one term or a limited number of terms. There also was the absence of a bill of rights. Jefferson was anxious to see that the republic would never be perverted. For this reason, he wanted to avoid any form of permanent incumbency which would eventually lead to a monarchy or some other despotism. But he was equally aware that the people had to be protected from the

<sup>1</sup> government. His presence in Europe brought him face to face with governments which ground the people "to atoms."<sup>2</sup> While he had been sensitive to preserve individual rights, Jefferson became hypersensitive to do so because of having been in Europe.

John Adams sent Jefferson his first copy of the Constitution. In his first letter in which he commented on the Constitution, Adams asked Jefferson what his opinions were on a declaration of rights and whether such a declaration should have preceded the instrument of<sup>3</sup> government. Jefferson never answered Adams' question. The

<sup>1</sup>

Patterson, Constitutional Principles, viii, and Jefferson to Madison, July 31, 1788, Boyd, Papers, XIII, 443.

<sup>2</sup>

Jefferson to Monroe, August 9, 1788, Ibid., XIII, 490.

<sup>3</sup>

Adams to Jefferson, November 10, 1787, Ibid., XII, 335.

discussion on the Constitution ended abruptly with Adams' letter of December 6, 1787. Adams was more concerned with bringing his European affairs to an end and returning home to the United States.<sup>4</sup> Jefferson's answer to Adams' question was in evidence in the volume of correspondence he wrote on the subject. He had wanted such a declaration incorporated in the body of the Constitution.<sup>5</sup> In this manner, a bill of rights, he felt, would have a greater effect than if just amended to the Constitution. Still he would accept an amended bill.

Jefferson first mentioned the effect which the Constitution's lack of a bill of rights was making in American newspapers. His correspondents kept him not only informed by their letters but also supplied with packets of newspapers and journals. Summarizing for William Carmichael the objections of the papers, he stated that they principally dealt with the nature of the government and the rights of the people in relationship to it. The general government would act directly on the people- by-passing the state government. Yet there were no safeguards that could restrain the federal government. Such safeguards should be the renunciation of the power to keep a standing army, the liberty of the press, and the insurance of trial by jury in civil cases.<sup>6</sup>

Jefferson expanded his conception of a bill of rights when he wrote to Madison on December 20, 1787. He completed his bill with freedom of religion, restriction against monopolies, and a permanent

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Adams to Jefferson, December 10, 1787, Boyd, Papers, XII, 413.

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Jefferson to Humphreys, March 18, 1789, Ibid., XIV, 678, and Jefferson to Madison, March 15, 1789, Ibid., XIV, 660.

6

Jefferson to Carmichael, December 15, 1787, Ibid., XII, 425.

writ of habeas corpus with no provision for its suspension.

Madison had previously stated to Jefferson that the reasoning of the Constitutional Convention for not including a bill of rights. The main point of his discussion maintained that within the checks and balances of the makeup of the new government and the interplay of the various sections of the country, there would be a measure of protection

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of the individual's rights. According to Farrand, the matter of a bill of rights to preface the Constitution was not brought up until near the end of the convention. George Mason, the author of Virginia's Bill of Rights, would have allowed the omission to pass if only some "general principles" had been outlined for a future framing of such a

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bill. This was voted down unanimously. The proposal was turned down because most of the states already had provisions for the protection of the rights of individuals. As a result Mason refused

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to sign the Constitution.

Jefferson was not satisfied with Madison's explanation of how the individual's rights would be preserved. The power of the central government to nullify state laws, Madison had contended, would act as a means of preventing the states from infringing on the individual's

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rights. Jefferson could not accept the thought of insuring the individual's rights by implication. He countered Madison by stating that the people were entitled to a bill of rights from any government

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Jefferson to Madison, December 20, 1787, Boyd, Papers, XI, 440.

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Madison to Jefferson, October 24, 1787, Ibid., XII, 276-79.

9

Farrand, Constitution, 185-86.

10

George Mason to Jefferson, May 26, 1788, Boyd, Papers, XIII, 204-06.

11

Madison to Jefferson, October 24, 1787, Ibid., XII, 276.

under which they lived and that no government should refuse to grant  
12  
such a bill.

The fact that the Constitution was being well received, according  
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to the reports that he was receiving, surprised Jefferson. He had  
considered that the Americans were people who were jealous of their  
liberty. Yet three-fourths of them would live under a government which  
did not insure them their rights. The American people had undergone a  
change which Jefferson denoted as "a degeneracy in the principles of  
liberty." He thought that it would have taken four hundred years for  
the subversion of American liberty to be accomplished when it seemingly  
14  
took only four.

The Americans were not as unconscious of their liberty as  
Jefferson had surmised. There were considerable minorities in all the  
states which ratified the Constitution as of December, 1788, which  
wanted this insurance of their rights. In Jefferson's opinion, the  
adoption of a bill of rights would thus take on the role of a  
unifying force to bring all the people together and firmly behind the  
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new government.

Jefferson's desire, however, for a bill of rights did not have  
only the narrow role of appeasing the opposition to the new  
Constitution. It was the "instrument of security for the rights of the  
people" which should not have been overlooked in the framing of the

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Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 440.

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Jefferson to John Rutledge, Jr., February 2, 1788, Ibid., XII, 557.

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Jefferson to William S. Smith, February 2, 1788, Ibid., XII, 558.

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Jefferson to Washington, December 5, 1788, Ibid., XIV, 328. Also  
Jefferson to Hopkinson, December 22, 1788, Ibid., XIV, 370.

16  
Constitution. In his own "Draft Constitution of 1783," he incorporated the essential rights in the body of his constitution as  
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limitations on the proposed government. He considered then such a bill to be most important since it would serve all the people. The lack of a bill of rights and the re-eligibility of the president presented threats to liberty. The difference between these two weaknesses of the Constitution was that the lack of the bill of rights presented the immediate threat. Jefferson feared the persistent  
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encroachment of government on the individual's liberty. The lack of a bill of rights in the Constitution would have an immediate effect on the status of liberty in the United States. Jefferson, to his satisfaction, learned that the majority of the states ratifying  
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the Constitution, specified that a bill be amended to the Constitution.

Jefferson had carried on with Madison a conversation on the bill of rights. From Madison's point of view, a bill of rights could be either a service or a disservice to the operation of the government. He favored the inclusion of one in the Constitution but did not  
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consider the exclusion in the same light as did Jefferson. Nonetheless, Jefferson expressed his satisfaction that Madison was not overtly  
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against the amending of a bill to the Constitution.

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16 Jefferson to Hopkinson, March 13, 1789, Boyd, Papers, XIV, 650-51.

17 Schachner, I, 121, and Padover, Complete Jefferson, 113. Also Jefferson to Madison, March 15, 1789, Boyd, Papers, XIV, 660.

18 Jefferson to Carrington, May 27, 1788, Ibid., XIII, 208-09.

19 Jefferson to Carmichael, August 2, 1788, Ibid., XIII, 502.

20 Madison to Jefferson, October 17, 1788, Ibid., XIV, 18.

21 Jefferson to Madison, March 15, 1789, Ibid., XIV, 659.

In the course of his discussion with Jefferson, Madison advanced four premises on which the Constitutional Convention based its reasons for the exclusion of a bill of rights. The first of these reasons, Madison offered, was that the Constitution granted certain powers to the federal government. These enumerated powers implied limitations. Jefferson had already repudiated this point. He refused to accept the idea of protecting the individual from the abuse of governmental power<sup>22</sup> by implication.

Madison's second contention was whether it was really possible to guarantee a particular right of an individual when there was the opposition of majority proportions in certain sections of the country against it with the expressed intention to deny it. He used as an example the purpose behind religious tests in New England.<sup>23</sup> The intent of these was to eliminate non-Christians from holding political offices. Jefferson realized and understood this insidious situation and its frame of mind. His answer to Madison was that "half a loaf is better than no bread."<sup>24</sup> To insure all the rights to which the people would be entitled would be the optimum desire. In the practical situation of everyday life, the best that could be done would be to insure those rights which could be insured.

The third point was another which Jefferson had already refused to accept. It was the one on which Madison had based his former argument against the bill of rights. The tension arising out of the limitations on the federal government and the "jealousies of the

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George Mason to Jefferson, May 26, 1788, Boyd, Papers, XIII, 204-06.

23

Madison to Jefferson, October 17, 1788, Ibid., XIV, 18.

24

Jefferson to Madison, March 15, 1788, Ibid., XIV, 660.



subordinate governments" would give the individual a measure of  
25 protection. Jefferson took issue with Madison's reasoning. In this particular phase of government, a bill of rights not only was necessary but extremely essential to the understanding of this tension. A bill of rights in the midst of the tension between the two levels of government would function as the basis of the opposition. Positing that this tension would exist precluded the necessity of principles on which to judge the acts of either level. The very nature of a bill of rights would thus be the underlying presupposition for all opposition  
26 to each level of government.

The fourth point that Madison took up in his argument for the exclusion of a bill of rights from the Constitution by the convention was that past experience demonstrated that a bill of rights was ineffective in the protection of the individual. The greater majority of the states had included a bill of rights in their constitutions. Referring to these, Madison stated that the overbearing majorities of these states had repeatedly violated the "parchment barriers." The crux of the problem laid with the will of the majority of the community. The majority would rule and government, its instrument, worked its  
27 will. Jefferson agreed with Madison that a bill of rights had not always fulfilled its purpose. Yet it had a place in the instrument as the restraining force on the majority, and it would always be the basis on which there could be an appeal for the maintenance of one's rights.

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Madison to Jefferson, October 17, 1788, Boyd, Papers, XIV, 18-19.

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Jefferson to Madison, March 15, 1789, Ibid., XIV, 660.

27

Madison to Jefferson, October 17, 1788, Ibid., XIV, 19-20.

In connection with his appraisal of the function of a bill of rights, Madison had questioned the essential purpose of a bill of rights in a republic.<sup>28</sup> He readily admitted to the justice of such a legal device in an absolute monarchy where the supreme power, the legislative, was lodged in the hands of one person. This monarch also had the use of physical power to carry out his will with dispatch. The combining of the political and the physical powers under one head had led to the abuse of the people. Under such circumstances, the people needed desperately a refuge such as a bill of rights. On the other hand in a republic, the legislative power was held by a body which was representative of the people. The acts of this body indirectly would have to be considered to be expressions of the will of the majority of the people. A bill of rights thus acting as a restraint on physical and political power which was held by the people would be a self-imposed restriction.

As incongruous as the function of a bill of rights may have seemed to Madison, it still was a necessity, in Jefferson's thinking, even in a republic. Jefferson feared that a form of abuse parallel to that of a monarch would eventually result in a republic. He referred to it as the "tyranny of the legislatures."<sup>29</sup> The common tendency of government, as Madison stated and of which Jefferson was equally aware, was to increase its own power at the expense of individual liberty.<sup>30</sup>

The end result of this discussion on the bill of rights between

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Madison to Jefferson, October 17, 1788, Boyd, Papers, XIV, 19-20.

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Jefferson to Madison, March 15, 1789, Ibid., XIV, 661. See also Jefferson to Hopkinson, March 13, 1789, Ibid., XIV, 650.

30

Madison to Jefferson, October 17, 1788, Ibid., XIV, 20.

Jefferson and Madison ended with Madison accepting the fact that a bill of rights was necessary even in a republic. Jefferson hoped that the addition of a bill of rights would not in any way alter the "whole  
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frame of government, or any essential part of it." Thus these two men came to agree on a bill of rights. Each had his own point of view which served to help the other understand the issue more fully.

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In the specific discussion on the elements of a bill of rights, Jefferson conceived that such a declaration should include freedom of the press, trial by jury, prohibition of a standing army, freedom of religion, restrictions on monopolies, and a perpetual enforcement of  
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habeas corpus laws. He especially wanted these particular rights because they would save the people from utter destruction as was  
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happening in Europe. The people would thus have a means to keep the government from becoming overbearing to the extent where it would be oblivious to the people who by natural right were the originators  
34  
and censors of government.

The element of a bill of rights on which Jefferson strongly expressed his feelings was trial by jury. While Madison felt that rights of the individual could be preserved by the tension resulting from the interplay between the federal and state government, Jefferson

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Jefferson to Madison, March 15, 1789, Boyd, Papers, XIV, 661.

32

Jefferson to Carmichael, December 15, 1787, Ibid., XII, 425; Jefferson to Madison, July 31, 1788, Ibid., XIII, 442; Jefferson to Hopkinson, March 31, 1789, Ibid., XIV, 650; and "Autobiography," Koch and Peden, Writings, 81.

33

"Notes on Virginia," Ibid., 265.

34

Jefferson to Carmichael, December 25, 1788, Boyd, Papers, XIV, 385.

could not see how this would be possible. In particular, such a  
tension could not insure trial by jury in civil cases in those states  
which had abandoned it.<sup>35</sup> There were other states which were also  
thinking of giving up trial by jury. A specific statement would bring  
"this palladium" uniformly to all the people.<sup>36</sup> The legal procedure  
of trial by jury was an exercise of the people. Abandoning trial by  
jury would eliminate the people from this function of the government  
to which they had a right.<sup>37</sup>

In a similar vein, Jefferson did not consider that the government  
gained any security during a period of civil crisis by suspending the  
writ of habeas corpus. He urged a permanent writ which could never be  
suspended. His reason was that the government did not gain greater  
security by the suspension. The government had all the means within  
the due process of law to preserve itself. Jefferson thought, in  
particular, of the effect on the people who lived under a situation  
where they were never secure of their rights because of the injudicious  
and frequent suspensions of the writ at the convenience of the  
government.<sup>38</sup>

As an example, Jefferson pointed to the instances in England  
when the writ had been suspended. In each case, he commented, the  
government did not really gain any advantage. As for the deciding of  
cases brought before the courts, these were found to be either of a  
treasonable nature or just "sham-plots."

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<sup>35</sup> Farrand, Constitution, 185.

<sup>36</sup> Jefferson to Madison, December 20, 1787, Boyd, Papers, XII, 440.

<sup>37</sup> Jefferson to Humphreys, March 18, 1789, Ibid., XIV, 678.

<sup>38</sup> Jefferson to Madison, July 31, 1788, Ibid., XIII, 442.

Jefferson had a measurable respect for the purpose of the press in a society. It could not be muzzled by the government but had to<sup>39</sup> be free to print the truth as it saw it. During the Shays' Rebellion, Jefferson had written to Carrington giving him his opinion on the situation. He stated that much of the Massachusetts discontent could have been mitigated if the press would have kept the people informed of the doings of the government. This was the duty of the press. In effect, Jefferson considered that the press, in com-<sup>40</sup>parison to government, was more important. So that the people could understand newspapers, Jefferson also urged that government take upon itself the responsibility to provide educational facilities for<sup>41</sup> the people.

While giving the press optimum freedom to print what it would want and also a specific place in society, he stated to Francis Hopkinson that he would like to keep his name and opinions out of<sup>42</sup> the papers. The only legal responsibility on the press would be that it would be liable to legal prosecution for printing and<sup>43</sup> publishing false information.

Reflecting the strong dislike of his contemporaries for the military, Jefferson wanted to forbade a standing army. The Society of Cincinnati, which had been organized in the latter days of the

39

Jefferson to Madison, July 31, 1788, Boyd, Papers, XIII, 442.

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Jefferson to Carrington, January 16, 1787, Ibid., XI, 49.

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Jefferson to Madison, December 20, 1787, Ibid., XII, 442.

42

Jefferson to Hopkinson, March 13, 1789, Ibid., XIV, 651.

43

"Draft of a Constitution," Padover, Complete Jefferson, 119.

war, aroused many suspicions because of its military character.

In his "Draft Constitution of 1783," Jefferson subordinated the

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military to the civil power. To counter any who considered that a

standing army would be the means of defense, he stated in his Notes

on Virginia, that a land army was useless for offense nor the best

or "safest instrument" for defense. Actually, the ocean would be the

battlefield with any enemy that would dare attack the United States.

Even if a land army would be landed, it would only be in detachment

strength. Jefferson could not conceive that a full-scale military

operation could be brought to the United States. Therefore, the

small size of any enemy landing force would be such that a militia

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could be quickly assembled to mount a defense.

Jefferson explained to Colonel Monroe his military strategy. A

permanent land force would, in effect, be an instrument of coercion

in the hand of the government. For this reason, there should not be

one. The United States had to have a small navy. This would serve

not only for defense, but also it would give some stature to the

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government. Jefferson wrote to Monroe on August 11, 1786. At that

time, he was negotiating with the Barbary Coast principalities. His

first reaction was to go to war against them rather than negotiate

according to their terms and methods.

Jefferson's opinions had not undergone any significant change

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Jensen, New Nation, 261-62, and "IV. Jefferson's Observations on Demeunier's Manuscript," Boyd, Papers, X, 53.

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"Draft of a Constitution," Padover, Complete Jefferson, 119.

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"Notes on Virginia," Koch and Peden, Writings, 285-86.

47

Jefferson to Monroe, August 11, 1786, Boyd, Papers, X, 225.



when he considered a constitutional statement forbidding a standing army in peacetime. He would have rather welcomed a more thorough training of the militia to take care of the peacetime garrison and custodial duties of the regular army.<sup>48</sup>

The immediate possibility of an invasion from either Canada or Florida did not make an impression on him. Madison took the view that even if there was the prohibition of a standing army and if there was the intelligence that military preparations were being undertaken for an invasion of the United States from either of these areas, "a paper declaration" would not prevent the United States from also preparing its forces even though war had not been declared. Madison added that the best security for the United States would be to remove the very threats to her security.<sup>49</sup>

The external threats in fact did not concern Jefferson. There remained ever before him the fear that the government would use the armed forces to coerce the citizenry. This luxury, he did not want left in the hands of the government. It was too dangerous an instrument.<sup>50</sup> The presence of an army placed the people at the mercy of the government, and the "rights of the nation" would be in danger.<sup>51</sup>

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Jefferson added the unlimited restriction against monopolies.

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Jefferson to Madison, July 31, 1788, Boyd, Papers, XIII, 443.

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Madison to Jefferson, October 17, 1788, Ibid., XIV, 21.

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In commenting on the pre-revolutionary rumblings emitting from the French Assembly of Notables, Jefferson stated that the French situation would not be improved because of "the dangerous machine of a standing army." Jefferson to Dr. Richard Price, January 8, 1789, Ibid., XIV, 423.

51

Jefferson to Humphreys, March 18, 1789, Ibid., XIV, 678.

52

Jefferson to Madison, July 31, 1788, Ibid., XIII, 442.

There would not be by legal sanction any situation that caused distress among the bulk of the people just for the advantage of a very small group. Jefferson, in advocating this prohibition to protect the people from an abuse based on a contractual and legal arrangement, had in mind the immediate problem he had been facing since he had been in France. This was the tobacco monopoly in France held by the Farmers General. It had contracted with Robert Morris to supply it with American tobacco. The contract called for a delivery of twenty thousand hogsheads per year. The stipulations of the agreement provided for delivery in American ships to certain French ports which were otherwise closed to American shipping. The monopolistic arrangement of the Farmers General specified that all American tobacco would be purchased from Morris. Thus he was able to depress the price of tobacco and reap a magnificent profit. Jefferson had worked by<sup>53</sup> enlisting the help of Lafayette to destroy this monopoly.

Jefferson's work putting an end to this monopoly was unsuccessful. The most he could get for his labors was the assurance that the contract would not be renewed after 1787. The new arrangements that were contemplated would have been more equitable for the American tobacco producers.<sup>54</sup> Nonetheless, the entrenched Farmers General was able to circumvent royal orders to continue, in effect, its contract<sup>55</sup> with Morris by giving him preferential treatment.

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Jensen, New Nation, 202-04.

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Andre Limozin to Jefferson, August 19, 1787, Boyd, Papers, XII, 46-47.

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Jefferson to Pierre Samuel Dupont, October 6, 1787, Ibid., XII, 211-12. Also Madison to Jefferson, December 20, 1787, Ibid., XII, 443.

In Jefferson's opinion, no citizen should have any power or special advantage over the affairs of other citizens. Even though, he realized some might contend that the prohibition of monopolies might discourage the desire to develop such possibilities, he opposed them because of the limited scope of the benefits derived from them.<sup>56</sup>

Essential to human freedom was the freedom of the mind. Jefferson's concern for the freedom of the mind involved him in the struggle to achieve freedom of religion in Virginia. He based the presuppositions of this movement on reasons which differed from those of the philosophes of France who also advocated freedom of religion. The philosophes in many respects had come to consider the traditional religious patterns as totally false and inefficacious.<sup>57</sup> On the other hand, Jefferson had a place for deistic or theistic religions in his world. But he considered that religion was a private matter and not subject to public administration.<sup>58</sup>

On this premise, Jefferson framed a bill for religious freedom in Virginia which denied to one religious institution its special legal privileges and position and equated it with all other religious sects in the state. The issue of the bill was the separation of church and state. It was finally enacted after a struggle of almost seven years.<sup>59</sup>

Jefferson's urging for what he conceived to be a bill of rights grew out of his experience and knowledge. The foremost consideration

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Jefferson to Madison, July 31, 1788, Boyd, Papers, XIII, 443.

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Malone, Rights of Man, 110-11.

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Carl L. Becker, The Heavenly City of the Eighteenth-Century Philosophers, (New Haven: Yale University Press, 1932), 49, 63, and 69.

59

Jensen, New Nation, 131-32.

was to maintain the aggregate of the people in their dignified state of being the sovereign power of society. Government was only a means of maintaining order and regularizing the functions of society so that all the people might equally enjoy its advantages.

Each of the elements of his bill of rights served a specific function in securing the people in their relationship to government. Trial by jury gave the people the right to try their peers. The writ of habeas corpus would prevent the government from arbitrary action against the people. Even in times of crisis the government would have to remain within the mechanism of due process of law. The end result of this would be the people having a deep sense of the sanctity of the law. Freedom of the press would insure to the people that they would have an unending stream of information of the affairs of their government about which they would be entitled to know. The lack of a standing army would make the government more apt to regard the complaints of the people rather than turn the military on them. In effect, without a means of coercion, government would have to be persuasive and subject to alteration and compromise to meet the changing needs and demands of the people. The restriction on monopolies precluded that any segment of the population would be in a position to aggrandize itself by the subversion of the contractual relationship. The elimination of a legal religious preference from the political realm and also urging education for the people were parts of Jefferson's program to secure the republic from its immediate enemies- ignorance and superstition.

VII. JEFFERSON AND THE MOVEMENT FOR A  
SECOND CONVENTION

The Constitution of 1787 had not been approved by all the delegates of the Constitutional Convention. There were a few who refused to sign the document. Others who signed looked to a second convention to consider amendments forwarded by the state conventions. It had been even stated in the Convention to rework the entire Constitution if necessary.<sup>1</sup> The thought of a second convention was well received by Jefferson. Madison's long letter of October 24, 1787, had brought information of this matter; but Jefferson already had a copy of the Constitution. The method of amendment by general convention had been provided for in the Constitution.

Jefferson was not adverse to the prospect of a second convention. If this was necessary to produce a better instrument of government that would be more satisfactory to the people, then it should take place.<sup>2</sup> As of December 20, 1787, Jefferson did not consider the Constitution adequate for reasons already discussed. He wanted a second convention. He couched his preference as a demand coming from the people. It would be then the way of insuring the retention of what was good and getting rid of the bad.<sup>3</sup> In reply to Jefferson, Madison

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<sup>1</sup> Farrand, Constitution, 180-81 and 191-92.

<sup>2</sup> Jefferson to Carmichael, December 15, 1787, Boyd, Papers, XII, 426.

<sup>3</sup> Jefferson to Madison, December 20, 1787, Ibid., XII, 441.

stated that a second convention to frame a new Constitution would be a total failure. He did not think that the spirit of compromise which characterized the proceedings of the Convention would again pervade another convention. In the meantime, he continued that the elements which favored disunion had gained popular support in some parts of the country.<sup>4</sup> Nonetheless, he had the assurance that a second convention would not occur. It stemmed from the probability that the states which had already ratified would not rescind their acts.<sup>5</sup>

After a letter from Washington in which the general pointedly summarized the situation at home and the necessity for the adoption of the Constitution to head off the possibility of unforeseen disaster for the country, Jefferson considered the best choice to be adoption of the Constitution as it was. Under the Constitution, only nine states were required to amend the instrument of government. It would take under the former Articles of Confederation, thirteen states for the calling of a second convention.<sup>6</sup> The situation could be stalemated.

The prospect of a second convention attracted those who wanted to defeat the Constitution and those who desired to rectify by amendment certain features or omissions of the new plan under consideration. During the late summer of 1788, the protagonists of the second convention idea gained ground by the Circular Letter of the New York Convention. The New York Convention had ratified the Constitution but also had sent out this circular to all the states calling for an

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Madison to Jefferson, April 22, 1788, Boyd, Papers, XIII, 98, and Carrington to Jefferson, April 24, 1788, Ibid., XIII, 101.

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Madison to Jefferson, April 22, 1788, Ibid., XIII, 98-99.

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Jefferson to Thomas Lee Shippen, June 19, 1788, Ibid., XIII, 277.



immediate second convention to consider amendments.<sup>7</sup> Madison's reaction to this move by New York was one of dread. It would bring, if successful, an early convention. Madison instead urged that there be a cooling-off period. He suggested that there be a year of government under the Constitution and then amendments be suggested. These amendments, he considered, would be of more value than any made by anyone in the immediate situation.<sup>8</sup>

The New York Circular Letter gave Madison reason for concern. The enemies of the Constitution could use it as a pretext for actually subjecting the entire Constitution to revision. The matter of taxation brought on the most opposition. This provision would be greatly altered by a second convention. Madison's consolation was that not all areas of the country endorsed the letter. There were those segments of the population which were satisfied with the new instrument of government and were more interested to employ the other means of alteration of the Constitution as provided for under the instrument itself.<sup>9</sup>

The New York Circular Letter gave an added impetus to the desire for a new convention. Another push came from North Carolina. New York had been the eleventh state to ratify the Constitution. In the late summer and early fall, attention was turned to North Carolina which had in its convention refused to ratify the Constitution.<sup>10</sup>

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<sup>7</sup> John Brown Cutting to Jefferson, September 16, 1788, Boyd, Papers, XIII, 608.

<sup>8</sup> Madison to Jefferson, August 23, 1788, Ibid., XIII, 540.

<sup>9</sup> Madison to Jefferson, September 21, 1788, Ibid., XIII, 624-25, and Madison to Jefferson, December 8, 1788, Ibid., XIV, 340.

<sup>10</sup> McLaughlin, Confederation and Constitution, 312, and John Brown Cutting to Jefferson, September 20, 1788, Boyd, Papers, XIII, 644.

By not ratifying the Constitution, North Carolina did not close  
11 the issue. The state had internal difficulties and also had been  
subjected to external pressures from both friends and foes of the  
Constitution. In the meantime, preparations for the launching of the  
new government had begun. The state convention resolved to wait and  
see what amendments would be added to the Constitution by either a new  
12 general convention of the states or by the Congress and the states.

By December of 1788, Jefferson himself opposed a second  
convention. Having been apprized of the intent of some of the  
opposition to destroy as much of the Constitution and to make it as  
ineffective as possible, he abandoned the thought of another  
convention. The risk involved, as Madison calculated, was too great  
13 to take. He agreed with Madison.

Jefferson had fostered the prospect of a second convention, but  
within a year changed his mind after he became aware of the risks and  
the tenor of those who desired the destruction of the Constitution.  
As Jefferson became more convinced that the Constitution of 1787 would  
provide for a stable and effective, though not too energetic govern-  
ment, he also became intent on saving the Constitution for its good  
features. The opponents threatened the entire structure and this,  
Jefferson would not accept.

By February of 1789, the probability of a second convention had  
lessened and the attention of the opposition turned toward trying to

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Jefferson to Washington, December 14, 1788, Boyd, Papers, XIV, 328.

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John Brown Cutting to Jefferson, October 6, 1788, Ibid., XIII, 660.

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Jefferson to Hopkinson, December 21, 1788, Ibid., XIV, 370.

get as many of their number into the new government. <sup>14</sup> Much of the  
desire for the second convention was dispelled as it became evident  
that a Bill of Rights would be amended to the Constitution. <sup>15</sup>

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Jefferson to William Short, February 9, 1789, Boyd, Papers, XIV, 529.

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Jefferson to Thomas Paine, March 17, 1789, Ibid., XIV, 673.

### VIII. CONCLUSION

Jefferson approached the Constitution of 1787 with one basic premise in mind. The most important entity of a nation was its people. Without them, there was no nation. The government of that nation existed solely for their convenience and happiness. In itself, government had no reason for being. Nor could any one person personify the nation or be the interpreter of its general will. The government could have no will of its own but had to be the servant of<sup>1</sup> and ever responsive to its taskmaster- the people.

In Jefferson's political philosophy, there was no justification of a government to act against the people. Any argument for the use of force was unacceptable. Its basic presuppositions contradicted the purpose of government in society. He referred to such a government as "a government of wolves over sheep."<sup>2</sup> From his writings, it can be extrapolated that when the relationship of ruler as master and citizen as slave existed in a political order, government ceased to exist. If a society such as that of the American Indian existed without a government, then on the other extreme, a despotism which was too much government had to be considered beyond the

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<sup>1</sup> Jefferson to Carrington, January 6, 1787, Boyd, Papers, XI, 49.

<sup>2</sup> Jefferson to Madison, January 30, 1787, Ibid., XI, 92-93.

definition of what constituted government. Therefore, to Jefferson, government had to be the entity which came out of a society where the opinion of each individual had its "just influence," and the "mass of mankind" enjoyed a "precious degree of liberty and happiness."<sup>3</sup>

Jefferson's basic premise of the government existing for the sole benefit of the people posited two criteria by which to examine any instrument of government. The first stemmed directly out of his democratic views. The people had to have adequate legal safeguards to protect themselves from the power of government. Government, being of the nature of a contract, contained a certain quantity of force. This force which emanated out of the contractual relationship between government and people bound both parties to agree by its terms. This was the natural limit of force a government had at its disposal. But even this quantity had to be definitively examined and contained so as to prevent an injudicious use of it or an extension beyond its limits.

Inherent in Jefferson's philosophy was the fact that the government had to be limited.<sup>4</sup> Government was to have just enough power to conduct its business and not one bit more. The government, therefore, could not assume for itself any phase of activity which the people could adequately carry on for themselves. In particular, Jefferson thought of trial by jury. The people had the right to sit in judgment on themselves. The people, and not a functionary of the state, had the natural right in this matter. Jefferson feared the slow and persistent encroaching movement of government to assume more and more

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Jefferson to Madison, January 30, 1787, Boyd, Papers, XI, 92-93.

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Jefferson to William S. Smith, February 2, 1788, Ibid., XII, 558.

responsibility for itself. To prevent this from occurring, there had to be barriers. Such a barrier was a Bill of Rights. Although Madison referred to it as a "parchment barrier," Jefferson thought of it as the real defense of individual liberties.<sup>5</sup>

The second of the two criteria was that once a society formed a political order which insured for itself order and stability, though not at the expense of its liberty and happiness, then that government had to be protected from itself. Its constitution could not contain the seeds of its own destruction. Within its structure, there could not be lurking the cancer which would bring about its downfall. In viewing the Constitution of 1787, Jefferson took exception with the fact that the executive was always eligible to be continually re-elected to the office. The elected head of the government, as Jefferson saw him, could because he had all the accoutrements of power at his disposal, stay in office indefinitely. Jefferson was correct in his view. Even though he hoped that the tradition set by Madison, Monroe, and himself would be the means of fixing the number of terms a president could have, a constitution amendment proved to be necessary.

In like manner, he considered that rotation of offices was healthy for two reasons. There could not develop any form of permanent incumbency or peculiar privilege to an office. In keeping with his notion of government, it was to be a school for the training of people in the function and problems of government. By the rotation of offices, more people would have the opportunity to serve in a political office. According to Jefferson, any person was eligible for any position of public trust.



There was, in Jefferson's thinking, the problem of striking the delicate balance between the need to take care of the exigencies of the moment and the far-reaching consequences. The bill of rights amended to the Constitution would take care of the present situation. The threat of government against the people was constant. A new, untried government presented even more of a threat. The permanence of the executive was in the future to be a danger. First there had to be someone to subvert the office and make it into a life tenure. With the election of Washington, Jefferson's fears were abated; but he was mindful of the lesser characters who would come along.

Jefferson viewed another balance of values in looking at the Articles of Confederation versus the Constitution. The diplomatic and financial situation forced the United States to reconsider its place in the European world of which it was a part. By its revolution, the United States did not cut itself off from Europe. There were commercial ties with England and France. There were desires and the necessity to establish more with other nations. The United States was indebted to England, France, Holland, and Spain. Still, it had territorial disputes with England and Spain. It depended on England's goods and Dutch money. It was intellectually bound to Europe by culture and language. Not quite strong enough to stand alone and too strong to consider itself to have to be subservient, the United States had to employ the means to insure its own national independence and gain its ends of national fulfillment. In Jefferson's mind, these issues were held together by a thread of continuity. There had to be a proper balance to achieve the needs of the present without sacrificing the future.

Although Jefferson considered the earth as belonging to the living, the germinal idea behind this opinion which he later developed, came to the surface when he was critically examining the Constitution during the period of ratification. Although the Constitution had to provide a means of solving the immediate problems, it could not present insoluble ones to posterity.

Jefferson demonstrated his tremendous capacity as a practical thinker and an evaluator of the Constitution during the period of ratification. Although he was not completely informed of the immediate situation of the United States from 1784 to 1789, he knew what was right in a practical sense for the country. Government, after all, was a practical matter. It had to work. The ideal was the goal, and there had to be a striving toward it. It was Mr. Jefferson's practicality which helped him overcome some of his objections such as direct taxation, lack of an incorporated bill of rights, the veto power of the executive, legislative superiority of Congress over the states, and an insufficient role of the judiciary in the government. He had to be able to envision how the government would function under the Constitution when he came out strongly against a second federal convention. That convention might tamper with the delicate mechanism of the Constitution. In another respect, he firmly advocated a bill of rights, but he wanted that bill to be so amended to the Constitution that it would not upset the balance of the new instrument of government.

Jefferson held the people almost as an ideal concept except that he sincerely considered that they were able to know what was right for their own government. He looked at the Constitutional Convention and

the Shays' Rebellion as expressions of the people. One was enlightened and the other was not. His sense of the practical extended even to the people. He knew the people of the United States, and he urged that the government be responsible for their education. He did not blame the insurgents of the Shays' Rebellion for their acts; he blamed their ignorance. It was the fault of the government of Massachusetts for keeping them in ignorance. These people did not have sufficient information about their government. If they had newspapers and were able to read them with understanding, the rebellion may have never taken place. He knew that the people could be duped if they were uneducated. Thus he urged Madison and George Wythe to see that the people be educated. He charged Wythe, in particular, to preach against ignorance. Behind the hope that the republic would live on and not fail its ideals had to be an educated and informed people.

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Thomas Jefferson revealed many of his principles when he examined the Constitution of 1787. He became a firm friend of the Constitution and looked at it as a means of providing the best of possible government for the people of his country. Under this Constitution, there would be a respect for law, an order for further development of democratic ideals, and the fulfillment of the people as political and social beings.

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